



THE  
**ARIZONA**  
JUDICIARY

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*This booklet has been prepared to provide a general overview of the Arizona judiciary. The Federal Courts are not part of the state court system and, therefore, they are not discussed here. This booklet is not intended to be a detailed explanation of all cases or all aspects of the court system, and it is not intended to provide legal advice or assistance.*

# Introduction

This booklet on the Arizona Judiciary is designed to give the citizens of this state a source of information about the court system of Arizona.

Since courts play such a vital role in our system of government, I believe that it is important that every citizen understand the structure and functions of the court system. The information in this booklet is presented to answer many of the commonly asked questions about court operations, selection of judges, and the judicial process.

It is my hope that this booklet provides sufficient information to be helpful in expanding the reader's knowledge of our Arizona system of justice.

*William A. Holohan*

William A. Holohan  
Chief Justice  
Arizona Supreme Court  
November, 1982

*The judicial system and the legal process are often viewed as mysterious creatures. Yet the judicial branch of government was designed to protect the rights of all citizens and to provide due process of law. The courts, as an integral part of our system of justice, serve to safeguard the continued existence of a free people.*



# Historical Perspective

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*In order to understand the Arizona courts of today better, it is important to consider the historical development of Arizona's judiciary.*

## Statehood and the Judiciary

The Arizona Constitution was drafted at the Constitutional Convention which concluded on December 9, 1910. Article VI of the Arizona Constitution deals with the Judicial Department. It specifies the various courts in the state and generally outlines their jurisdiction and the qualifications for judges. The original Constitution provided for: 1) a Supreme Court consisting of three justices; 2) a Superior Court in each organized county; 3) Justice of the Peace Courts; and 4) "such courts inferior to the superior courts as may be provided by law." All judges were elected officials and subject to recall. At an election held on February 9, 1911, Arizona's citizens ratified the Constitution by a vote of 12,187 to 3,302. However, approvals by Congress and the President of the United States were not so easily attained.

President William H. Taft vetoed Congressional approval of Arizona's Constitution and cited his opposition to the recall provisions for elected public officials, including judges, as the primary reason for his action.

Congress then adopted a resolution which made approval contingent upon Arizona's adopting an amendment which would exclude judges from the Constitution's recall provision. Because of their intense desire for statehood, Arizona's citizens overwhelmingly approved such an amendment at an election held on December 12, 1911. Following that, on February 14, 1912, President Taft issued a proclamation declaring Arizona a state.

However, the citizens of Arizona were sincere in their desire to include judges under the recall provision, and at the first general election following statehood that provision was restored to its original form. The provision was tested in 1924, when a Superior Court judge was successfully recalled in Pinal County.

In 1939, legislation was enacted to create police courts, commonly referred to as City or Municipal Courts. Creation of such courts was provided for in the Arizona Constitution. No other major changes were made in the Arizona judiciary until November, 1960.

## Modern Courts Amendment

The Arizona voters approved what is traditionally known as the "Modern Courts Amendment" in November, 1960. This was the first time that the Judicial Article of the

Constitution had been substantially changed. The Amendment's most significant changes related to activities of the Supreme Court. Article VI was revised to clearly state that:

The judicial power shall be vested in an integrated judicial department consisting of a Supreme Court, such intermediate appellate courts as may be provided by law, a superior court, such courts inferior to the superior court as may be provided by law, and justice courts. Article VI, Section 1.

The new article increased the minimum number of Supreme Court justices from three to five. It further provided that the Court could sit *en banc* (all justices present), or in division of not less than three justices. (The Court can only declare a law unconstitutional when sitting *en banc*.)

The new article specifically empowered the Supreme Court with "administrative supervision over all the courts of the state." It states that this supervision is to be exercised by the Chief Justice or the Vice Chief Justice in the absence or incapacity of the Chief Justice. This supervisory power includes assigning judges from all levels of courts to serve in other courts or counties.

Another important change was that the Amendment gave the Supreme Court authority to "make rules relative to all procedural matters in any court."

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## Merit Selection of Judges and the Commission on Judicial Qualifications

In the latter part of 1967, Arizona's Chief Justice Charles C. Bernstein and Governor Jack Williams jointly called a citizens' conference on Arizona Courts. As a result of that conference, an organization known as the Citizen's Association on Arizona Courts was formed. After considerable study, this group made several recommendations including reorganization of the courts of limited jurisdiction, creation of a disciplinary commission related to judicial qualifications, and revision of the system of selecting judges.\* Two of these recommendations were implemented.

In 1970, the Arizona Commission on Judicial Qualifications was established pursuant to a Constitutional amendment. Later an initiative measure to amend the State Constitution so as to achieve merit selection of judges was proposed and in 1974, the voters approved this measure. It went into effect in December, 1974.

The Arizona Constitution now mandates merit selection of justices for the Supreme Court, judges for the Court of Appeals, and judges for the Superior Courts located in counties with a population of 150,000 or more (Maricopa and Pima). The remaining counties elect

their Superior Court judges in non-partisan general elections. These latter counties may choose to select their Superior Court judges using the merit selection process, but to date none have done so.

The Arizona Constitution requires mandatory retirement of Supreme Court justices and judges of the Court of Appeals and Superior Court when they reach the age of 70. The Constitution also provides that these judges are not eligible for any other public office or public employment during their term of office. They are not permitted to

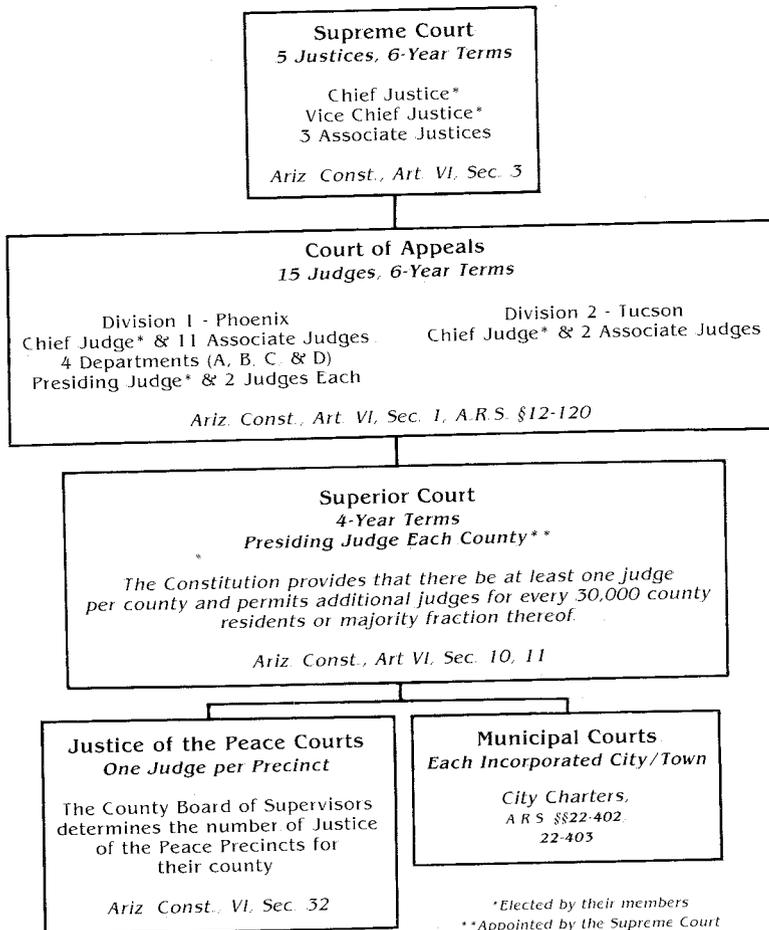
practice law, hold office in any political party, or campaign in any election other than their own. In addition, Article VI, Section 28 of the Constitution states:

Any justice or judge who files nomination papers for an elective office, other than for judge of the superior court . . . forfeits his judicial office.



# Today's Court System

## Organizational Chart — The Arizona Judiciary



This chart provides a graphic representation of the Arizona judiciary. Connecting lines from the lower courts upward indicate the normal route of appeal. For example, if the decision of a Justice of the Peace Court is appealed, the appeal is heard in the Superior Court.

The Arizona court system has three tiers or component parts: 1) the limited jurisdiction courts, 2) the general jurisdiction court, and 3) the appellate courts.

Starting with the lower courts and working upward on the chart, there are two limited jurisdiction courts: Justice of the Peace Courts and Municipal Courts. They are called limited jurisdiction courts because there are various limits on the types of cases which can be tried in each of these courts.

In Arizona there is only one court of general jurisdiction and that is the Superior Court.

The remaining two courts, the Supreme Court and the Court of Appeals, have what is called appellate jurisdiction. These courts do not hear trials as the other courts do; they hear appeals on cases that have gone to trial in the other courts. When decisions of cases tried in the Superior Court are appealed, they usually go to the intermediate appellate court, the Court of Appeals. An exception to this is any case in which a sentence of death or life imprisonment has been imposed. These cases are appealed directly to the Supreme Court; they are not heard by the Court of Appeals.

If a party wishes to appeal the decision of the Court of Appeals, a "petition for review" may be filed to request review by the Supreme Court. The Supreme Court then decides whether the petition will be granted and the case reviewed.

## The Appellate Courts

*As previously indicated, the primary responsibility of appellate courts is to hear appeals from the decisions of courts inferior to them. Arizona has two levels of appellate courts: the Supreme Court and the Court of Appeals.*

### THE SUPREME COURT

The Supreme Court is the state's highest court. The Arizona Constitution provides the Supreme Court with administrative supervision over all the courts of the state and gives the Chief Justice authority to exercise that supervision.

### Justices

The Supreme Court consists of five justices whose regular term of office is six years. Justices of the Supreme Court must be of good moral character and admitted to the practice of law in Arizona and a resident of Arizona for ten years immediately prior to their taking office.

### Jurisdiction

The jurisdiction of the Supreme Court, as provided in Article VI, Section 5 of the Arizona Constitution, includes appellate jurisdiction, the issuance of extraordinary writs, and the power to make rules relative to any procedural matter in any court. At its discretion, the Supreme Court may review a decision of the intermediate appellate court when a litigant files a "petition for review." In criminal cases where a sentence of death or life imprisonment is imposed by a Superior Court judge, an appeal is filed directly with the Supreme Court.

Through its rule-making authority, the Supreme Court regulates the activities of the State Bar of Arizona and oversees the admission of new attorneys to the practice of law. The State Bar has responsibility for filing disciplinary and removal petitions related to the alleged misconduct of Arizona attorneys, but only the Supreme Court has authority to actually suspend an attorney from practice or disbar an attorney.

The Supreme Court also serves as the final decision-making body when disciplinary recommendations against Arizona judges are filed by the Commission on Judicial Qualifications.



## Case Processing

When a petition for review by the Supreme Court is filed, the record on appeal is transferred to the Supreme Court and a decision is made as to whether to grant review. If the Court refuses to grant review, the decision of the Court of Appeals is deemed final.

When the Supreme Court agrees to review a decision, the justices review the record on appeal and the questions or "points of law" it raises. In some instances, the Court agrees to hear oral arguments by the attorneys. When oral argument is granted, the attorneys for the "appellant" (party bringing the appeal) and "appellee" (party responding to the appeal) appear before the Court and have approximately fifteen minutes each to highlight their side of the issue and emphasize the previous legal decisions which support a judgment in their favor.

When issuing a written decision or opinion, the Court will usually affirm the decision, reverse the decision, or remand the case. When a decision is affirmed, it means that the Supreme Court agrees with the judgment entered by the trial court and that judgment stands as final. When a case is reversed, the Supreme Court disagrees with the decision of the trial court, and the decision of the Supreme Court must be carried out. In some instances, a case will be remanded (sent back) to the trial court for further action and possibly for retrial.

## Other Personnel

The Arizona Constitution provides that "the Supreme Court shall appoint an administrative director and staff to serve at its pleasure to assist the chief justice in discharging his administrative duties." The administrative matters assigned to the Administrative Director of the Courts vary from time to time, but generally consist of: 1) budget preparation and presentation to the Legislature; 2) management of Supreme Court funds and special funds assigned to the supervision of the Supreme Court; 3) design and implementation of judicial education programs; 4) management of the Foster Care Review Board system; 5) serving as administrative liaison with the other courts in the state; and 6) undertaking special projects as assigned.

In addition, the Constitution authorizes the Supreme Court to name a Clerk who serves at the pleasure of the Court. Many of the duties of the Clerk have remained the same since statehood. According to A.R.S. §12-202, the Clerk shall: 1) attend sessions of the Court; 2) issue writs and processes of the Court; 3) enter all Court orders, judgments, and decrees required to be entered, the title of each action, the date of filing in the Supreme Court, and a memorandum of all subsequent proceedings, with the date and fees charged; and 4) keep such other books of record and perform such other duties as required by law or the Court. The Clerk's office maintains all of the case files of the Court and assists the Court in the scheduling of

hearings and oral arguments. The Clerk's office is also responsible for the publication and distribution of the Court's written opinions.

## THE COURT OF APPEALS

Arizona's intermediate appellate court, the Court of Appeals, was first established in 1965. This court consists of two divisions. Division One, with twelve judges, is located in Phoenix and Division Two, with three judges, sits in Tucson.

### Judges

To qualify for appointment to the Court of Appeals, a person must be at least thirty years of age, of good moral character, a resident of Arizona for five years immediately prior to taking office, and admitted to the practice of law in Arizona during that same period.

Judges for the Court of Appeals sit in three-judge panels when hearing and deciding cases.

### Jurisdiction

The Court of Appeals has appellate jurisdiction to determine all matters properly appealed from the Superior Court. In criminal cases, however, where the sentence of death or life imprisonment has actually been imposed, the appeal is directly to the Arizona Supreme Court. In most instances, appeal to the Court of Appeals is not "discretionary." This means that

the court must hear and review all decisions properly appealed to it.

In addition to hearing Superior Court appeals, Division One has statewide responsibility for reviewing appeals and decisions arising from the Industrial Commission and unemployment compensation rulings of the Department of Economic Security.

### Case Processing

Most of the caseload of the Court of Appeals involves appeals from Superior Court decisions. There are some differences in the processing of civil and criminal cases; for example, in a civil case, the parties are required to pay filing fees and in a criminal case, no fees are required. The overall process is, however, similar.

When an appeal is filed, the trial court sends the official case records to the Court of Appeals. When all of the appropriate records and attorneys' briefs regarding the issues on appeal have been received by the court, the case is considered to be "at issue" and is assigned to a three-judge panel for review. Each judge reviews the relevant trial court records and the briefs which have been submitted.

The brief of the appellant indicates the issues on appeal and contains legal arguments as to why the decision of the trial court should be reversed. The brief of the appellee responds to these issues with arguments and legal authority supporting the trial court's decision.



The appellate court does not hold a trial; it reviews the record on appeal and may listen to oral arguments. When oral arguments are granted, no witnesses are called; in fact, the parties to the case rarely attend.

After review and consultation, the panel issues an opinion. As with the Supreme Court, there are three major decisions which can be rendered. The Court of Appeals may agree with the decision of the trial court and affirm that decision; it may disagree with the trial court and reverse the decision; or, it may

remand the case to the trial court for further action or a new trial.

A party may request that the decision of the Court of Appeals be reviewed by the Supreme Court, but this is a "discretionary" review, i.e., one which the Supreme Court, at its discretion, may choose not to hear.

### Other Personnel

Statutes provide that each Division of the Court of Appeals shall have a Clerk of Court and other personnel as required and that these employees serve at the pleasure of the court. The duties of the clerk are outlined by statute (A.R.S. §12-120.09), and are similar to those of the Supreme Court Clerk.

## General Jurisdiction Court



### **THE SUPERIOR COURT**

The Superior Court of Arizona is the state's only general jurisdiction court. It is a statewide trial court and is empowered to hear and decide a large variety of cases.

### **Judges**

Article VI of the Arizona Constitution provides for one Superior Court judge in each county and permits one additional judge for every 30,000 inhabitants or majority fraction thereof beyond the county's first 30,000 inhabitants. Accordingly, in 1912 there were 14 Superior Court judges, one for each

county. Over the years the number of Superior Court judges has increased so that by January, 1983, there will be over 83 Superior Court judges in the State of Arizona. These judges serve a regular term of office of four years.

Pursuant to the Arizona Constitution, judges of the Superior Court "shall be at least thirty years of age, of good moral character and admitted to the practice of law in and a resident of the state for five years next preceding their taking office" (Article VI, Section 22).

Since 1971, judicial assistance has been authorized by state law through the appointment of judges *pro tempore* pursuant to A.R.S. §12-141. Upon the request of the presiding judge of a county, with the approval of the board of supervisors, the Chief Justice of the Supreme Court may appoint judges *pro tempore* to assist a Superior Court with its caseload.

In each county having two or more Superior Court judges (ten counties), the Supreme Court designates a presiding judge who exercises administrative supervision over the court. The presiding judge of the Superior Court performs such other duties as may be provided by law or by rules, orders, and requirements of the Supreme Court.

## Other Personnel

Each county has a Superior Court Clerk who is elected at the general election. The responsibilities of the clerk's office are diversified and include the maintenance of official court case files; certification of documents; collection of fees; and issuance of summonses, subpoenas, and marriage licenses. The clerk serves as jury commissioner in all counties except Maricopa and Pima, where a separate jury commissioner is appointed.

In addition to the clerk, Maricopa and Pima counties each have a court administrator who assists the presiding judge in carrying out administrative duties such as case scheduling and budget preparation and administration.

Court commissioners may be appointed by the presiding judge of the Superior Court in counties with three or more judges. Commissioners serve at the pleasure of the presiding judge. Pursuant to law and Supreme Court rules, they assist the Superior Court judge in resolving certain matters and cases. Commissioners usually determine matters where a default has been entered against a party and they may also preside at the initial appearance of a defendant charged with a crime.

## Jurisdiction

As noted earlier, the Superior Court has general jurisdiction; it can hear almost any type of case except minor offenses and violations of city codes and ordinances. Pursuant to the Arizona Constitution, Article VI, Section 14, the Superior Court has original jurisdiction in the following matters:

- Cases and proceedings in which exclusive jurisdiction is not vested by law in another court.
- Cases of equity and at law which involve the title to or possession of real property, or the legality of any tax, impost, assessment, toll, or a municipal ordinance.
- Other cases in which the demand or value of property in controversy amounts to \$1,000 or more exclusive of interest and costs.
- Criminal cases amounting to felony and cases of misdemeanor not otherwise provided for by law.
- Actions of forcible entry and detainer.
- Proceedings in insolvency.
- Actions to prevent or abate nuisance.
- Matters of probate.
- Divorce and for annulment of marriage.
- Naturalization and the issuance of papers therefor.
- Special cases and proceedings not otherwise provided for, and such other jurisdiction as may be provided by law.

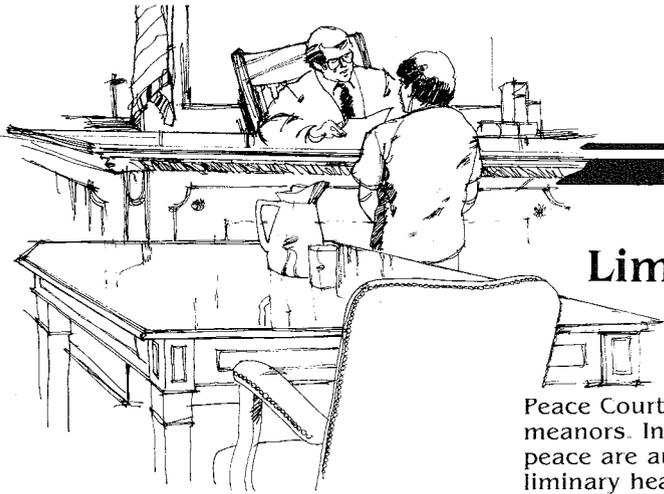
The Superior Court also has concurrent jurisdiction with the Justice of the Peace Courts over civil claims involving \$500 or more, but less than \$2,500.

In addition, the Superior Court is authorized to act as an appellate court hearing appeals from decisions made in the limited jurisdiction courts, i.e., Justice of the Peace and Municipal Courts.

Through its probation department, the Superior Court is responsible for supervising criminal defendants who have been placed on probation and juveniles who have been placed on probation after being adjudicated delinquent. In some counties the Superior Court has separate adult and juvenile probation departments.

## Specialized Services

The concept of specialization within the Superior Court in the various counties is most developed in the area of juvenile matters. In counties having more than one Superior Court judge, a specialized juvenile court is usually established and one or more Superior Court judges are assigned specifically to hear juvenile cases regarding delinquency, incorrigibility, and dependency. Further specialization has developed in some counties with high case-loads. In these counties specific judges may be assigned to hear probate matters, criminal cases, and/or domestic relations cases.



*Justice of the Peace and Municipal Courts are known as courts of limited jurisdiction. This means that they are only permitted to hear and decide a very limited number of types of cases. These courts are also Arizona's only "non-record" courts, i.e., they are not required to make a permanent record of all court proceedings; however, records are made in some instances.*

## **JUSTICE OF THE PEACE COURTS**

### **General Information and Jurisdiction**

As was true at the time of statehood in 1912, the Justice of the Peace Courts are generally governed by statute rather than the Arizona Constitution. The Arizona Constitution does, however, provide that the civil jurisdiction of Justice of the Peace Courts shall not exceed the sum of \$2,500 exclusive of interest and costs and that the criminal trial jurisdiction of Justice of the

## **Limited Jurisdiction Courts**

Peace Courts is limited to misdemeanors. In addition, justices of the peace are authorized to hold preliminary hearings for defendants charged with felonies.

In further defining the civil jurisdiction of the Justice of the Peace Courts, the Arizona Statutes provide that in civil cases the justice of the peace has exclusive jurisdiction in matters involving less than \$500 and concurrent jurisdiction with the Superior Court in matters involving \$500 or more, but less than \$2,500. There is also concurrent jurisdiction with the Superior Court in cases of forcible entry and detainer, provided that the rental value of the property does not exceed \$500 per month and damages do not exceed \$1,000. Justices of the peace may hear matters regarding possession of, but not title to, real property.

State law also provides for a special small claims procedure in the Justice Court for claims not in excess of \$500. This special procedure permits litigants to resolve their claims without the use of lawyers. It also permits the presiding judge of the Superior Court to appoint special hearing officers in the Justice of the Peace Court to decide these cases.

Section 22-301 of the Arizona Revised Statutes provides criminal jurisdiction as follows:

The justice of the peace courts shall have jurisdiction of the following offenses committed within their respective precincts in which such courts are established, subject only to the right of change of venue as provided by law:

1. Petty theft.
2. Assault or battery not charged to have been committed upon a public officer in the discharge of his duties, or to have been committed with such intent as to render the offense a felony.
3. Breaches of peace, routs, affrays and committing a willful injury to property.
4. Misdemeanors and criminal offenses punishable by a fine not exceeding one thousand dollars or imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment....
5. Felonies, but only for the purpose of commencing action and conducting proceedings through preliminary examinations and to hold the defendant to answer to the superior court or to discharge the defendant if it appears that there is not probable cause to believe the defendant guilty of an offense.

## Precincts and Judges

Each county board of supervisors is charged with the power and responsibility of dividing the county into justice court precincts. These precincts may be changed if necessary, but a precinct cannot be abolished until the term of office of the incumbent justice of the peace expires. In January, 1983, there will be 84 justices of the peace in the same number of precincts.

The regular term of office for a justice of the peace is four years. Qualifications for election to this office include being at least 18 years of age, a resident of the state, an elector of the precinct in which elected, and able to read and write the English language. Justices of the peace are not required to be attorneys.

Pursuant to state law (A.R.S. §22-121), the presiding judge of the Superior Court may appoint a justice of the peace *pro tempore* for any precinct in that county where one is needed. Such appointment is subject to the approval of the board of supervisors.

## Other Personnel

Statutes provide that each Justice Court have a constable (A.R.S. §22-102). The constable is an elected official whose primary duty is to execute, serve, and return various legal notices and documents as directed by the court.

In many courts, the justice of the peace has one or more clerks to provide clerical assistance and maintain court records.

## Case Processing

Two major types of cases can be filed in the Justice of the Peace Court: civil and criminal. Trials held in either type of case follow the same basic procedures as a Superior Court trial.

### CIVIL CASES

Although different rules and statutes apply to the hearing of various types of cases including small claims, the following procedure applies to most civil cases.

To begin a case the "plaintiff" (person initiating the lawsuit) files a civil complaint with the court. The "defendant" (person against whom the case is being filed) must be informed of the complaint and given an opportunity to file an answer. Court fees are charged to file a complaint and to file an answer. After the answer has been filed, the case can be scheduled for trial. After the trial, the court makes a decision and enters a judgment. If the judgment is in favor of the plaintiff, further court action may be necessary to collect the judgment. In most instances the losing party may appeal to the Superior Court. Such appeals are heard as a trial *de novo* (new trial) unless the parties have previously agreed to have a record made. Statutes do not permit appeals in small claims division cases.

### CRIMINAL CASES

There are two methods which are normally used to begin a criminal action in a limited jurisdiction court:

1. Filing of a criminal complaint by the county attorney, or

2. Using a cite and release method whereby the accused is released after the arresting officer has prepared the complaint and the accused has signed a written promise to appear in court.

After a criminal action is begun using the first method, the next step is to bring the defendant, who may be in custody at the city or county jail, before the court for an "initial appearance." These appearances are sometimes conducted by court commissioners. The purpose of the initial appearance is to notify the defendant of the charges and inform the defendant of his/her rights. (If the defendant is charged with a felony, the defendant is entitled to a preliminary hearing prior to arraignment, unless indicted by a grand jury prior to the preliminary hearing.) At arraignment the defendant may enter a plea of "guilty," "not guilty," or "no contest" to the charges which have been filed.

The second method of beginning a criminal action may only be used in conjunction with misdemeanor offenses. Defendants in cases begun in this manner have both an initial appearance and an arraignment as described in the preceding paragraph, but the two activities are often conducted in one court appearance.

When the defendant pleads guilty or no contest, the court usually sets a date for the defendant to return



to court for sentencing. When the defendant pleads not guilty, the court sets a date for trial. Upon completion of the trial, if the defendant is found not guilty, the case ends. On the other hand, if the defendant is found guilty, a date is set for sentencing.

The defendant has a right to appeal the decision. Although the Justice Court is not a court of record, in some courts a record is made of criminal case proceedings. When a record exists, the decision can be appealed on that record. If no record has been made and the decision is appealed, it will be heard as a trial *de novo*.

## **MUNICIPAL COURTS**

*The second type of limited jurisdiction court in Arizona is the Municipal or City Court.*

### **General Information and Jurisdiction**

Statutes require that each incorporated city or town have a court; state laws refer to these as police courts. These courts have criminal jurisdiction in matters arising out of the ordinances of their city or town and have concurrent jurisdiction with the Justice of the Peace Courts over violations of state law committed within the city or town limits. The criminal trial jurisdiction of Municipal Courts is limited to misdemeanors.

### **Judges and Other Personnel**

Qualifications for judges in the Municipal Courts are set by the individual city's charter or ordinances. Some municipalities require that their judges be attorneys, and others do not. In most cases, Municipal Court judges are appointed by, and serve at the pleasure of the city council.

As in the Justice of the Peace Courts, Municipal Court judges are often assisted by at least one clerk. In the larger cities, such as Phoenix and Tucson, additional management assistance is provided by one or more court administrators.

### **Case Processing**

The criminal cases which are filed with the Municipal Court are processed in the same general manner as those filed in the Justice of the Peace Courts.

To summarize, Arizona has three levels of courts: limited jurisdiction courts, a general jurisdiction court, and appellate courts. The existence and activities of each court are governed by the Arizona Constitution, the Arizona Revised Statutes, and the Arizona Rules of Court.

Virtually all traffic and misdemeanor cases are filed in the Justice of the Peace and Municipal Courts. For this reason, the primary contact which most people have with the judicial system in Arizona is in these courts.

# How a Case Begins and Proceeds

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*There are two major types of cases: civil and criminal. This section of the booklet explains more about each of these types of cases and then outlines the flow of major activities during a trial. The information presented here applies primarily to Superior Court cases but the subsection on trials also applies, in general, to limited jurisdiction courts.*

## Civil Cases

Civil cases most often involve legal disputes among individuals, businesses, corporations, and partnerships. At times an individual can be involved in a civil lawsuit with a government entity such as a state, county, or city. Most civil cases involve matters related to a breach of contract, the collection of a debt, or monetary compensation for personal injuries or property damage.

A special type of civil case is sometimes filed in court under what is termed "equity." Equity covers such matters as lawsuits for injunctions to compel a party to perform an obligation or to prevent a person or business from continuing some type of alleged wrongdoing. In most equity cases money damages cannot be recovered and the parties are not entitled to a jury trial.

The person suing in a civil case is called the "plaintiff" and the person or organization being sued is called the "defendant." A civil lawsuit begins when the plaintiff files a

complaint with the clerk of the court. The plaintiff then obtains a "summons" from the clerk. The summons is a formal notice to the defendant stating that the lawsuit has been filed. The plaintiff, usually with the aid of an attorney, must then make arrangements to have the defendant served with a copy of the summons and the complaint. In most instances the defendant will have 20 days from the date of service in which to file a written answer to the complaint. This answer is filed with the clerk of the court. Fees are charged to file a complaint and to file an answer.

Various rules of procedure established by the courts govern the steps in the lawsuit. After the lawsuit has been filed, the parties continue their preparation for trial which may involve filing various pretrial motions, answering written questions called interrogatories, and taking depositions, i.e., sworn testimony prior to trial.

After a certain time has elapsed for the preparation stage, the court will schedule the case for trial, usually at the request of the plaintiff. A plaintiff's case can be dismissed by the court if no request for a trial is filed within one year of the date on which the complaint was filed.

At trial, the plaintiff must prove the allegations stated in the complaint. In most civil cases the degree of proof is by what is called a "preponderance of the evidence." In an effort to persuade the judge

or jury that they are right, both the plaintiff and the defendant will be able to call witnesses to testify on their behalf and to introduce into evidence various exhibits such as written documents.

If a defendant who is legally served with a summons and complaint fails to answer the complaint, the plaintiff may seek a default judgment. In the more populous counties of Maricopa and Pima, default proceedings are often heard by court commissioners.

There are several specialized types of civil proceedings. Probate matters for the distribution of property of a person who has died and for payment of the deceased person's creditors are one. Another area of specialized civil proceedings is domestic relations. In these actions the parties to the case seek to dissolve their marriage and frequently litigate issues related to the custody of their children, division of their property, and payment of their debts. A dissolution of marriage case follows the same general procedure discussed in regard to a civil case, but in addition to those activities, the plaintiff and defendant often find themselves involved in pretrial hearings before the court. These special hearings are called "order to show cause hearings" and are usually held to decide temporary matters pending final trial of the dissolution case itself.

## Criminal Cases

Criminal cases are those which result from an alleged violation of the criminal code.

Criminal charges in general jurisdiction courts are initiated in one of two ways:

1. As the result of a grand jury indictment or
2. As the result of the filing of a document, called an "information," which charges a crime. The information can be filed by the county attorney or in certain cases by the Attorney General.

In felony cases, before an information can be filed, a criminal complaint must be filed in the Justice of the Peace Court or before some other magistrate. A criminal complaint must be based on more than mere speculation of the complaining witness. If the receiving judge has any doubts about this, additional investigation can be ordered. In addition, before the judge can issue an arrest warrant, he/she must determine that there is reasonable cause to believe a crime has been committed and that the accused has committed it.

**ARREST.** In cases where the accused is not in custody and has not signed a promise to appear, the judge issues a summons or a warrant for arrest. A summons directs the accused "to appear in court at a designated time," whereas a warrant authorizes the arrest of the accused.

**INITIAL APPEARANCE.** A person who is arrested and taken into custody must be taken before a

magistrate for an initial appearance within 24 hours of the arrest. At an initial appearance, the accused is informed of the charges and is advised of certain rights. Pretrial release conditions are also set at this time. If the offense charged is a felony, the defendant is informed of the right to a preliminary hearing and a date is set for the hearing.

**BAIL.** When a defendant is released prior to trial, bail may be assessed in order to insure the defendant's appearance at trial. The amount of bail is set by the judge. If the defendant cannot post the bail amount or arrange to have it posted by someone else, the defendant is not released from custody. When bail is posted, the defendant is released. If the defendant fails to appear for trial after having posted bail, the security which was posted as bail is forfeited.

The Arizona Constitution (Article II, Section 22) was recently amended by the citizens of Arizona and states that:

All persons charged with crime shall be bailable by sufficient sureties, except for:

1. Capital offenses when the proof is evident or the presumption great.
2. Felony offenses committed when the person charged is already admitted to bail on a separate felony charge and where the proof is evident or the presumption great as to the present charge.

3. Felony offenses if the person charged poses a substantial danger to any other person or the community, if no conditions of release which may be imposed will reasonably assure the safety of the other person or the community and if the proof is evident or the presumption great as to the present charge.

In some instances, a defendant may be released without bail, i.e., on his/her promise to appear. This method may be used unless there is reason to believe that such a promise is not sufficient to reasonably assure the defendant's appearance in court.

**PRELIMINARY HEARING.** When a complaint has been filed charging a felony, the defendant is entitled to a preliminary hearing. At the preliminary hearing (usually conducted by the justice of the peace in the precinct where the crime was committed) the judge determines whether the evidence presented is sufficient to find probable cause to believe that the crime was committed and that it was committed by the defendant. If the judge finds "probable cause," the case is bound over for trial in the Superior Court. If the case is bound over, an information charging the offense is filed in Superior Court and a date for arraignment is set. If the judge does not find probable cause, the complaint is dismissed and the defendant is released.

**ARRAIGNMENT.** At arraignment the defendant appears before the trial court and enters a plea of guilty, not guilty, or no contest to the charges contained in the infor-

mation or indictment. If the plea is not guilty, a trial date is set; if the plea is guilty or no contest, a date for sentencing is set. Persons charged with felonies are arraigned in Superior Court.

## The Trial

Trials in both civil and criminal cases are generally conducted in much the same manner; therefore, they will be addressed jointly here. As a matter of convenience, it will be assumed that each party is represented by counsel; however, it should be understood that this is not always the case, especially in limited jurisdiction courts.

**THE PEOPLE INVOLVED.** The judge is the central figure in the courtroom and is generally seated higher than the other personnel involved as

he/she presides over the case before the court. The judge is there as an impartial tribunal to assure a fair trial by giving each side an opportunity to present their version of the disputed incident. All trials are conducted according to established rules of procedure and evidence.

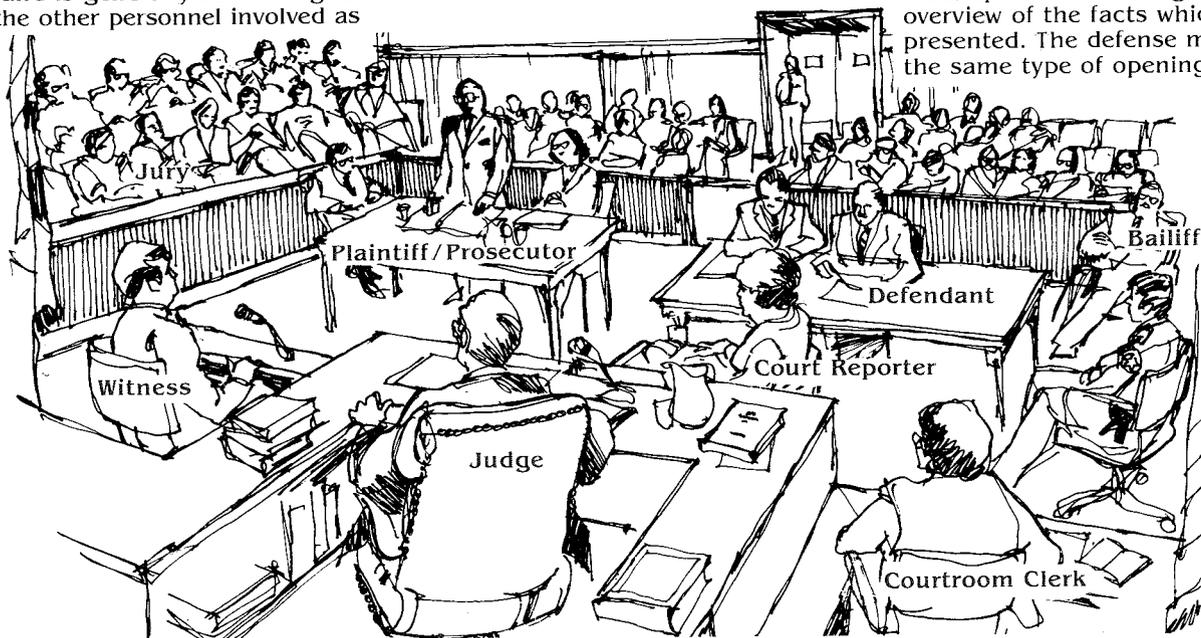
Also present are a court reporter, a courtroom clerk, and a bailiff. Each of these people assist the judge with some aspect of the trial. The court reporter records all proceedings; the courtroom clerk records selected activities for official case file records and is responsible for all case exhibits; the bailiff is responsible for maintaining order in the court and overseeing the jury if there is one.

The other major figures in any trial are the litigants (parties to the action) and their attorneys.

Attorneys are officers of the court. Their role is to protect individual rights and insure just treatment of their clients. Attorneys present the evidence and legal arguments which they believe are necessary for the court to make a just determination.

Trials may be to the court or to a jury. In most civil cases, either party may request a jury trial. In more serious criminal cases, the defendant has a right to trial by a jury. In a jury trial, the jury decides the facts of the case based on the evidence presented. In a trial to the court, the judge determines the facts in the case.

**THE SEQUENCE OF EVENTS.** When the court is ready for the trial to begin, opening statements are made. The attorney for the plaintiff, prosecuting attorney in a criminal case, speaks first and gives an overview of the facts which will be presented. The defense may present the same type of opening comment



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or may reserve the opening statement until later in the trial when the defense presents its case. Either party may choose to waive the opening statement.

The plaintiff in a civil case or the prosecuting attorney in a criminal case will begin to present their case by calling witnesses and asking them questions. Witnesses take an oath stating that what they say in court is the truth. All evidence presented in court, including testimony of witnesses and physical evidence such as documents or articles of clothing, must comply with the Arizona Rules of Evidence which specify what evidence is admissible in court.

When the plaintiff or prosecution's side has completed its questioning of the witness, the defense is allowed to "cross-examine" the witness on any area of testimony which was given during direct examination.

After cross-examination, the party who originally called the witness to the stand may wish to ask additional questions of the witness in order to clarify something touched on in the cross-examination. This is called "re-direct" examination and is followed by an opportunity for the opposing attorney to "re-cross-examine."

When the plaintiff or prosecutor has called all of the witnesses for their side of the case and presented all of their evidence, they rest their case.

The defense now has the opportunity to present evidence establishing their side of the case. The

attorney for the defense often waits until this portion of the trial to make an opening statement.

The defense may choose not to present any evidence since they are not required to do so. Remember, the defendant in a criminal case is not required to prove innocence, but rather the prosecution is required to prove guilt. And likewise in a civil case, it is the plaintiff who must prove negligence or liability. The burden of proof rests with the party filing the complaint.

If the defense does choose to present a case and call witnesses, the same rules and procedures which governed presentation of evidence by the plaintiff/prosecution apply to evidence presented by the defense. The only difference is that the defense now calls the witnesses and questions them first.

At the conclusion of the defendant's case, the plaintiff/prosecutor may choose to present additional information to refute evidence presented by the defense. Following this, the defense is given an opportunity to present additional evidence on their behalf.

When both sides have presented all of the evidence they wish to enter, they are each permitted to make closing arguments.

Closing arguments are similar to opening statements. They provide an opportunity for the attorneys to address the judge or jury one last time regarding the merits of their case. The plaintiff/prosecutor speaks first, usually summarizing the evidence that has been presented and highlighting those items most beneficial to his/her clients.

In a criminal case, the people of the state are the prosecutor's clients. The attorney for the defendant speaks next. The defense attorney will usually summarize the strongest points of the defendant's case and point out flaws in the case presented by the plaintiff/prosecutor. At this point the plaintiff/prosecutor is given one last opportunity to speak.

Finally, in a jury trial, the judge reads the legal "instructions" concerning the law applicable in the case. Jury members are to follow these instructions in reaching a verdict. The jury then goes to the jury deliberation room and elects a foreman. They proceed to consider the evidence, determine the facts of the case, and reach a verdict.

When the jury has reached a verdict, court is reconvened and the judge or court clerk reads the verdict. The jury is then released.

**JUDGMENT AND SENTENCING.** The court enters judgment according to the jury's verdict, if there was a jury, or the judge's decision, if there was no jury. Under special circumstances in a civil case, a judge may enter a "judgment notwithstanding the verdict"; such judgment is different from the jury's verdict. In a criminal trial, if the defendant has been found guilty, a date for sentencing will be set.

In Arizona, the Legislature has established a range of sentences available for various crimes. The judge must impose a sentence within the range outlined by the Legislature.

# Service as a Juror

*Jurors are the heart of the judicial system in the United States. The Constitution and subsequent case law both specify the right to a trial by a "jury of your peers" in many circumstances. The jury being referred to in this context is a petit jury; there is also what is known as a grand jury.*



## Trial or Petit Juries

Since June 1, 1980, names of prospective jurors have been obtained through a process of random selection using lists of registered voters and lists of licensed drivers who are 18 years of age and older. Other lists may be used as determined by the Supreme Court.

Everyone who is a qualified voter and is able to understand the English language is qualified to be a juror. No qualified jurors are exempt from service although the statutes do allow individuals to be excused from service under certain circumstances.

Jurors for courts of limited jurisdiction (Justice of the Peace and Municipal) may be called for jury service by the court in which they are to serve or by the jury commissioner of the Superior Court.

The term of jury service varies, but does not normally exceed 120 days, and in some courts it is shorter.

In the Superior Court, a trial jury for a criminal case in which a sentence of death or of thirty or more years imprisonment is authorized consists of 12 persons and a

unanimous verdict is required. All other criminal cases may be tried to a jury of eight persons with a concurrence of all eight necessary to render a verdict.

Juries for Superior Court civil cases consist of eight persons and the concurrence of six members is required to render a verdict.

In the limited jurisdiction courts, juries consist of six members. In criminal cases unanimous agreement is required to render a verdict, and in civil cases, a concurrence of five jurors is required.

Statutes permit verdicts to be rendered by concurrence of fewer members of a jury when this has been agreed upon by the parties in a civil case or the parties and the court in a criminal case.

## County Grand Jury

A county grand jury is a group of 12-16 citizens who have qualified for jury service in the county. It is their responsibility to inquire into public offenses including the "corrupt or willful misconduct in office of public officials."

In order to initiate a criminal case, the county attorney may choose to present evidence to a grand jury and ask them to render a criminal indictment. An indictment or "true bill" is a formal accusation "presented by the grand jury to the superior court charging the commission of a public offense which may be tried within the county." In order to indict, at least nine members of the grand jury must agree that there is probable cause to believe that the person under investigation is guilty of the offense charged.

Members of the county grand jury usually serve a term of not more than 120 days.

## State Grand Jury

Up to three grand juries can be empaneled at the state level. The powers and duties of a state grand jury are similar to those of the county grand juries, except that the jurisdiction extends throughout the entire state. The scope of the investigations of a state grand jury is specified by statute and the Supreme Court makes rules and regulations to govern the procedures of state grand juries.

# Commissions on Judicial Appointments

Commissions on judicial appointments, referred to as judicial nominating commissions, are the core of the merit selection system. There are currently three such commissions on judicial appointments, one each for Maricopa and Pima Superior Court appointments and one for appellate court appointments. Each commission has nine members. Five non-lawyer members are selected by the Governor and three attorney members are chosen by the State Bar; all are then nominated by the Governor and must be confirmed by the State Senate. The Chief Justice of the Arizona Supreme Court presides over each commission and is thus a ninth

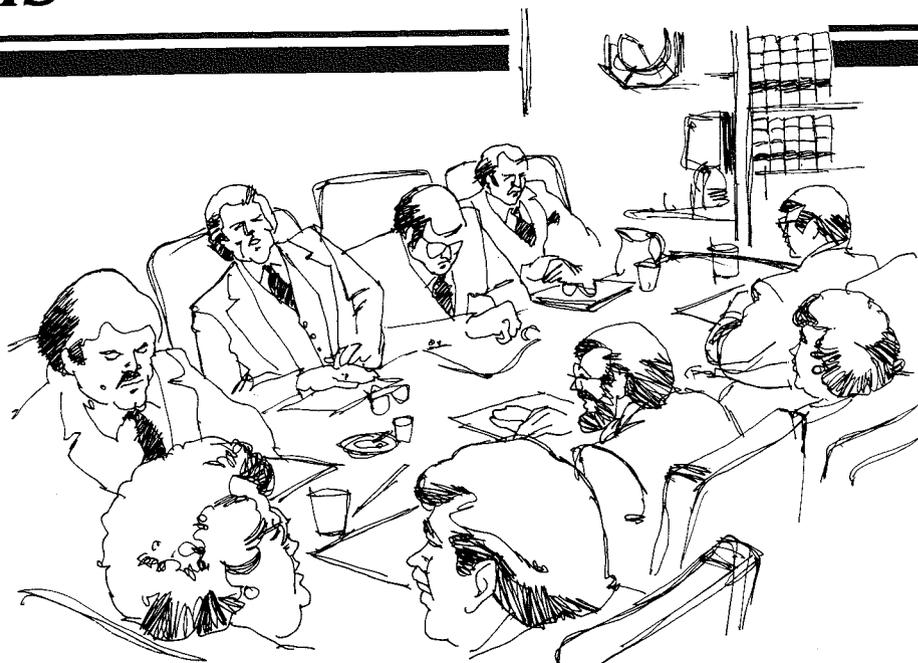
member; however, the Chief Justice votes only in the case of a tie. Commission members serve staggered terms of four years. When a vacancy occurs on a particular court, a call for nominations and applications is made. When the appropriate commission reviews potential nominees, they are mindful of the constitutional requirements for the post.

The Constitution requires that the nominating commission submit at least three nominees, but as many as six have been recommended to the Governor for one position. Should the commission fail to submit names to the Governor within sixty days after the vacancy occurs, the Governor may appoint any qualified person to fill the vacancy. Should the Governor fail to appoint one of the commission's nominees within sixty days after the names are submitted, the Chief Justice makes the appointment.

The judges appointed to office under the merit system initially hold office for a term which ends 60 days following the next regular general election after a two-year term of office. At the election, voters indicate "yes" or "no" on the issue of retaining the judge or justice. If retained, the judge serves a full regular term (of either four or six years depending on the court) and then the retention process repeats itself. When a judge is not retained, the office is vacated upon expiration of the term, and the appropriate commission begins its nominating task once again.



# Commission on Judicial Qualifications



The Arizona Commission on Judicial Qualifications was established in 1970 pursuant to Article VI.1 of the Arizona Constitution. The purpose of the Commission is to review and investigate, when indicated, complaints against justices of the Supreme Court and judges of the Court of Appeals, Superior Court, and Justice of the Peace Courts. The Commission has no constitutionally provided jurisdiction over Municipal Court judges.

Any litigant aggrieved by a judge's legal ruling or decision must pursue whatever normal appeal rights may be available to correct the alleged legal error. The Commission cannot be used as a substitute for the the appellate process.

The Commission is empowered to investigate the following matters:

- The disability of a judge that seriously interferes with the performance of his duties and is or is likely to become permanent.
- Action by a judge that constitutes wilful misconduct in office.
- Action by a judge that constitutes a wilfull and persistent failure to perform his duties.
- Action by a judge that constitutes habitual intemperance.
- Conduct by a judge that is prejudicial to the administration of justice that brings the judicial office into disrepute.

The Commission does not have authority to publicly censure or to remove a judge from office. It can, however, recommend to the Supreme Court that such action be taken after holding a formal evidentiary hearing for the purpose of making findings of fact and formulating its recommendation. The activities of the Commission are confidential until such time as formal recommendations are filed with the Clerk of the Supreme Court. Only the Supreme Court has authority to take action on such formal recommendations.

# Glossary of Legal Terms

**A.R.S.**—Arizona Revised Statutes; laws of Arizona.

**ACQUIT**—To find a criminal defendant not guilty of the charges against him/her.

**ACTION**—A dispute taken to court for resolution; the terms case, suit, and lawsuit are synonymous with action.

**ADJUDICATE**—To decide or settle something in a legal setting.

**ADJUDICATION**—The pronouncing of a judgment or the judgment itself.

**ADVERSARY SYSTEM**—Method used in the courts of the United States to settle legal disputes; each of the opposing parties in a case is given the opportunity to present their side of the story to the trier of the facts (court or jury).

**AFFIDAVIT**—A voluntary statement or declaration of facts which has been written down and confirmed under oath.

**ALLEGATION**—An assertion, declaration, or statement which is made in a pleading by one of the parties to the action and tells what that party intends to prove.

**ANSWER**—Written response in a civil case, in it the defendant admits or denies the allegations of the plaintiff's complaint.

**APPEAL**—Legal process used to ask a higher court to review a decision.

**APPELLANT**—The party appealing a judgment or decision.

**APPELLATE COURT**—A court having jurisdiction (authority) to hear appeals.

**APPELLEE**—The party against whom the appeal is taken.

**ARRAIGNMENT**—Criminal case proceeding in which the defendant is brought before the trial court to answer criminal charges by entering a plea of guilty or not guilty. (In misdemeanor cases, this is often done in connection with the initial appearance.)

**ATTORNEY AT LAW**—Individual who is admitted to the State Bar of Arizona and thus may represent clients in legal proceedings.

**ATTORNEY OF RECORD**—Attorney whose name appears on the permanent records and files of a particular case.

**BAIL**—Monetary sum which can be assessed by a judge (magistrate) to insure that a criminal defendant who is being released prior to trial will in fact appear in court on the trial date. Securities posted as bail are returned when court appearances are satisfied.

**BAILIFF**—Courtroom attendant responsible for keeping order in the courtroom and overseeing the jury.

**BURDEN OF PROOF**—Responsibility for affirmatively proving the disputed facts in a case.

**CASE**—Lawsuit, suit, or action being resolved through the use of the court system.

**CHAMBERS**—Private office of the judge.

**CHIEF JUSTICE**—Presiding justice of the Supreme Court.

**CIVIL LAW**—Generally deals with personal actions and usually involves a contract, collection of a debt, or compensation for personal injury or property loss.

**COMPLAINT (civil)**—The first pleading in a civil case filed by the plaintiff. It alleges the material facts and legal theories to support the plaintiff's claim against the defendant.

**COMPLAINT (criminal)**—A written criminal charge, usually filed before a magistrate, that the defendant has committed a specified criminal offense.

**CONVICTION**—A finding by the judge or jury that a person charged with a criminal offense is guilty beyond a reasonable doubt of committing the crime charged.

**COUNTERCLAIM**—A claim filed by a defendant in a civil case in opposition to the plaintiff's complaint in which the defendant seeks relief from the plaintiff.

**COURT OF RECORD**—Courts in which the proceedings are permanently recorded pursuant to law. Justice of the Peace and Municipal Courts are not courts of record.

**COURT OF LIMITED JURISDICTION**—A court which may hear and decide only a limited number of types of cases. In Arizona, these are Justice of the Peace and Municipal Courts.

**CRIME**—An act considered dangerous to the general public that is forbidden by law and punishable by fine, imprisonment, or death.

**CROSS-EXAMINATION**—The questioning of a witness by the opposing party at a trial, hearing, or deposition.

**DAMAGES**—Monetary compensation claimed by a person who has suffered a loss or injury to his person, property, or rights as a result of the negligence or unlawful conduct of another.

**DEFAULT**—Failure of the defendant to file an answer or appear in a case within a certain period of time. This will usually result in a default judgment against the defendant.

**DEFENDANT**—The person or party sued in a civil case or accused in a criminal case.

**DIRECT EXAMINATION**—Questioning of a witness by the party who calls the witness.

**DUE PROCESS OF LAW**—The regular course of administration through the courts of justice under the protection of the law and Constitution so that every person can have a fair and impartial trial or hearing.

**EVIDENCE**—A fact presented in court through the testimony of a witness, an object, or written documents.

**EXHIBIT**—A document or object which is offered into evidence during a trial or hearing.

**FELONY**—A major crime.

**FORCIBLE ENTRY AND DETAINER**—A special proceeding for restoring possession of land to a person who has been wrongfully kept off of the land or deprived of possession of the land. This is a common proceeding used in landlord/tenant disputes.

**INDICTMENT**—A formal written accusation by a grand jury charging that a person or business committed a specific crime.

**INFORMATION**—A formal written accusation filed by a public officer such as a prosecuting attorney charging that a person or business committed a specific crime.

**INJUNCTION**—A writ or order by a court which requires a party to refrain from doing a particular thing or commanding that the party perform a particular act.

**JUDGMENT**—The official decision by a court regarding the rights and claims of the parties to a civil or criminal lawsuit.

**JUDGE PRO TEMPORE**—A temporary judge.

**JURISDICTION**—The legal authority of a court to hear and decide cases; the exercise of judicial power within certain geographic boundaries.

**JURY (grand)**—A group of persons who inquire into and investigate accusations in criminal cases, hear evidence, and issue indictments when they find probable cause.

**JURY (petit)**—The group of persons called to decide the facts and render a verdict at the trial of a civil or criminal case.

**LAW**—Provisions which regulate the conduct of society, primarily generated by the Legislature through statutes and sometimes by court decisions.

**LITIGATION**—Process of settling a dispute through the legal system.

**LITIGANT**—One of the parties involved in a legal action.

**MAGISTRATE**—Often used to refer to a municipal court judge, but A.R.S. §1-215 provides a broad definition which includes all those judicial officers having power to issue a warrant for arrest, i.e., a Supreme Court justice and judges of the Superior Court, Justice of the Peace Courts, and Municipal Courts.

**MISDEMEANOR**—A classification for offenses which are less serious than felonies; a misdemeanor is punishable by a sentence other than being placed in the custody of the Department of Corrections (A.R.S. §13-105).

**NEGLIGENCE**—Failure to act as a reasonable and prudent person would when attending to his own affairs under similar circumstances.

**OATH**—A pledge, affirmation, or declaration to provide true information.

**OPINION**—Written statement issued to report the decision of an appellate court.

**PAROLE**—A conditional release from confinement in prison granted by the Board of Pardons and Parole; it allows a person to complete a prison term outside of prison walls.

**PARTIES**—Persons, partnerships, corporations, businesses, or governmental organizations involved in legal proceedings; litigants.

**PLAINTIFF**—In a civil action, the party who files the lawsuit; in a criminal case, the state is the plaintiff.

**PLEA**—Response of a defendant to the criminal charges stated; the plea will usually be "guilty" or "not guilty."

**PLEADINGS**—Written documents stating the allegations and claims of the opposing parties in a legal dispute.

**PRELIMINARY HEARING**—Court proceeding which may be used to determine if the person charged with a felony should be held for trial.

**PROBATION**—A conditional suspension of the imposition of sentence by a court. If the terms of probation are completed successfully, sentence is not imposed; however, if the terms of probation are violated, probation may be revoked and the sentence imposed.

**PROSECUTOR**—Attorney representing the citizens of a particular community or the state; this may be the City Attorney, County Attorney, or Attorney General.

**REMAND**—To send back; an appellate court may remand a case to the trial court for re-trial or other action.

**REVERSE**—Decision of an appellate court to change, in whole or in part, the decision of a lower court.

**SENTENCE**—Punishment imposed by the court in accordance with the range of sentences outlined by statute.

**SMALL CLAIMS DIVISION**—Special division established within each Justice of the Peace Court. Its purpose is to provide legal resolution of claims which do not exceed \$500 in a relatively simple, fast, and inexpensive manner.

**STATUTE**—Law enacted by the Legislature and published as the Arizona Revised Statutes.

**SUBPOENA**—Legal document issued by the court to order a person to appear as specified and give testimony.

**SUMMONS**—Legal document issued by the court which directs the sheriff or other officer to notify the named defendant that a complaint has been filed and that he/she is required to appear and answer the complaint on or before the time and date specified.

**TESTIMONY**—Statements made by a witness who has taken an oath to tell the truth.

**TRANSCRIPT**—Official, verbatim record of court proceedings.

**TRIAL**—Formal presentation of facts to a court or jury in order to reach a legal resolution.

**TRIAL DE NOVO**—A new trial which is held in a higher court.

**VERDICT**—Formal decision of a trial jury.

**WITNESS**—Individual who gives testimony regarding what he/she has seen, heard, or otherwise observed.

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