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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:	Supreme Court No. R-25-0048
PETITION TO AMEND COURT RULES REGARDING SERVICE OF PROCESS OF NOTICE OF CLAIM UPON GOVERNMENT OFFICIALS	**Comment in Opposition to Petition to Amend Rules 4.1, 4.2, and 5, and to Add Rule 4.3, Arizona Rules of Civil Procedure**

Pursuant to Rule 28(d), Rules of the Supreme Court of Arizona, **Luis E. Santaella, Interim City Attorney, and Lori S. Davis, Chief Deputy City Attorney, Scottsdale City Attorney's Office,** respectfully submit this Comment for the Court's consideration. This Comment opposes the Petition to amend Arizona Rules of Civil Procedure 4.1, 4.2, and 5, and to add Rule 4.3 regarding service of notices of claim pursuant to A.R.S. § 12-821.01.

The Petition raises concerns about perceived difficulties in serving government employees. However, the proposed amendments are unnecessary, unconstitutional, contradictory to statute, and would create serious practical

problems. Furthermore, *Laurence v. Salt River Project Agricultural Improvement & Power District*, 255 Ariz. 95 (2023) already addresses many of the Petition's concerns without requiring the radical changes proposed. In short, the Petition advances a solution in search of a problem that does not exist.

I. The Amendment is Unnecessary: *Laurence v. Salt River Project* Already Addresses the Core Concern Raised in the Petition

The Petition's primary concern – that failure to serve individual employees defeats claims against governmental entities – has been substantially resolved by this Court's recent decision in *Laurence, supra*. This case fundamentally changed Arizona law regarding vicarious liability claims and notice of claim requirements. In *Laurence*, this Court held that when a tort claim against a government employee is dismissed with prejudice for reasons unrelated to the merits (such as failure to timely serve a notice of claim) the respondeat superior claim against the governmental employer remains viable, provided the employer itself was properly served. 255 Ariz. at 97, ¶ 1.

The Petitioner cites *Simon v. Maricopa Medical Center*, 225 Ariz. 55 (App. 2010),[1] as an example of unfairness where a plaintiff lost his claim because

[1] The Court of Appeals' decision in *Simon* was rendered in 2010 before this Court's decision in *Laurence* in 2023.

he failed to serve individual police officers.[2] However, if the plaintiff had properly served the City of Phoenix as it appears he may have done (*see Simon* at ¶ 21), his respondeat superior claim against the City could proceed (pursuant to *Laurence*) even if individual officers were not served. This means the Petition's core concern (that indigent litigants lose their claims entirely due to inability to locate and serve individual employees) is largely unfounded under current law. As long as the governmental entity is properly served, vicarious liability claims can proceed.

Since *Laurence* permits vicarious liability claims to proceed against properly-served governmental entities regardless of whether individual employees were served, the Petition's proposed rule 4.3(c) (providing that "service upon a government entity is also service upon its employees") is unnecessary to achieve the Petition's stated goal of ensuring access to justice.

[2] The Petition also cites *Batty v. Glendale Union High School District*, 221 Ariz. 592 (App. 2009), as demonstrating the need for rule changes. However, *Batty* does not support the Petition's proposed amendments. To the contrary, *Batty* demonstrates that courts can and do provide guidance on proper service, not that service requirements should be eliminated altogether.

II. The Amendment Would Be Unconstitutional: Individual Service Remains Necessary Due Process for Individuals

While *Laurence* addresses vicarious liability claims, it does not eliminate the requirement for individual service when plaintiffs seek to hold government employees personally liable in their individual capacities. However, when a plaintiff seeks to impose personal liability on a government employee, ostensibly to recover from the employee's personal assets or to hold the employee individually accountable, the employee has a constitutional due process right to receive actual, personal notice of the claim. This right cannot be satisfied by service upon the governmental entity alone.

The United States Supreme Court made clear in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950), that due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Thus, when a government employee faces personal liability – potential judgments against personal assets, damage to reputation, and personal legal exposure – that employee has an independent due process right to actual notice. Service upon the employer does not satisfy this constitutional requirement, as the employer may have divergent interests and no obligation to notify the employee of the claim.

Additionally, the Petition's proposed rule 4.3(c) states that "[s]ervice upon a government entity is also service upon its employees." This creates an irrebuttable

legal fiction that individual employees have been served even when they have received no actual notice of individual capacity claims against them. Consider a police officer who works patrol shifts and never visits administrative offices. If a plaintiff serves a city clerk with a notice of claim seeking damages from the officer personally, proposed rule 4.3(c) would deem the officer served. The officer might never learn of the claim until a default judgment is entered against him personally. This cannot satisfy constitutional due process requirements.

And while A.R.S. § 39-123 protects home addresses of certain government employees (such as police officers, *see* A.R.S.§ 39-123(A) and (F)(5) "Eligible person"), it does not prevent access to work addresses, duty stations, or other information sufficient to effect service. Claimants can serve employees at workplaces during work hours. For police officers, service can be arranged and accomplished at police stations, courthouses, or other locations. Moreover, when traditional service proves impracticable, Arizona Rule of Civil Procedure 4.1(k) permits service by alternative means. While the Petitioner claims this is unavailable during the notice of claim stage because ("there is no judge to make the motion to," *see* Petition at 4), nothing prevents a Claimant from filing suit and simultaneously seeking alternative service.

Furthermore, the language of proposed rule 4.3(c) that "[s]ervice upon a government entity is also service upon its employees" could extend liability to an

employee who has not even been named in the notice of claim. Simply because the governmental entity was served, any and all of its employees – named and unnamed – would be considered served. This cannot pass constitutional muster.

Given the serious consequences for individual defendants (including personal asset exposure, reputational harm, and individual legal defense burdens) the requirement of personal service is both constitutionally mandated and fundamentally fair. Claimants who wish to pursue these claims bear the burden of locating and serving individual defendants. This burden is appropriate given the serious personal consequences such claims create for individual employee defendants.

III. The Amendment Would Contradict the Notice of Claim Statute, A.R.S. § 12-821.01, Which Requires Individual Service for Individual Claims

The Petition's proposed amendments conflict with the plain language and legislative intent of Arizona's notice of claim statute, A.R.S. § 12-821.01(A). Strict compliance with A.R.S. § 12-821.01 is required, even "substantial" compliance is insufficient. *Falcon ex rel. Sandoval v. Maricopa County*, 213 Ariz. 525, 527, ¶10 (2006). That statute requires that a person "shall file claims with the person or persons authorized to accept service for the public entity, public school or public employee as set forth in the Arizona rules of civil procedure." This requirement that the claim be served upon the entity or employee as required in the Arizona Rules of Civil Procedure reflects the legislature's recognition that governmental entities and

individual employees have distinct interests requiring separate notice. The Rules have distinctly different requirements for service upon a governmental entity (*i.e.,* Rule 4.1(h), *Ariz. R. Civ. P.*) and an individual (*i.e.,* Rule 4.1(d), *Ariz. R. Civ. P.*), further demonstrating the legislature's recognition that service upon the entity is not service upon individual defendants. The proposed rules would rewrite this clear statutory command through procedural rulemaking, which is inappropriate when the statute's text is unambiguous.

The notice of claim statute, A.R.S. § 12-821.01, serves multiple purposes: to allow governmental entities to investigate claims promptly, to facilitate early settlement, to enable proper budgeting for potential liabilities, and to protect individual employees' rights to defend themselves. The requirement of individual service ensures that government employees facing personal liability receive actual notice and adequate opportunity to prepare a defense.

Notably, even in *Laurence*, this Court did not question the requirement that individual employees must be served when plaintiffs seek individual capacity judgments. The Court's holding was carefully limited to respondeat superior claims where the employer's liability is derivative of the employee's conduct, not individual capacity claims where the employee faces personal exposure.

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IV. The Proposed Rule Changes Would Create Practical Problems

Beyond constitutional and statutory concerns, the Petition's proposed amendments would create numerous practical problems. For example, proposed Rule 4.3(h) provides that "an e-mail sent is an e-mail received, notwithstanding whether or not there are any technical problems on the recipient's e-mail server." *See* Petition Ex. A at 12. This creates an irrebuttable presumption that is fundamentally unfair and inconsistent with established service principles. This provision would allow claimants to establish valid service even when emails are blocked by spam filters, directed to inactive accounts, or lost due to server failures. Individual defendants facing personal liability would have no recourse to demonstrate lack of actual notice. Such a rule invites abuse and creates unnecessary litigation over service validity.

In addition, the proposed rules would require governmental entities to maintain current service information in a centralized directory managed by the Administrative Director of the Supreme Court. *See* Petition, Appx. A, proposed rule 4.3(e). This would impose significant administrative burdens on governmental entities to continuously update information for all employees who might potentially be sued. It could also create potential liability for entities if the directory is not perfectly maintained, even when individuals receive actual notice through other means. It also places undue responsibility on the Administrative Director for a task outside traditional judicial functions and creates default service upon the Attorney General

whenever any entity fails directory requirements, potentially overwhelming that office. In short, it creates more problems than it solves.

Moreover, the proposal that the Attorney General automatically be designated for service if an entity fails to maintain proper service information (proposed rule 4.3(d)(2)) invites gamesmanship. Claimants could deliberately use obscure search methods or claim inability to find information, then serve only the Attorney General while avoiding individual service requirements entirely. Individual defendants might never receive notice unless or until the Attorney General forwards it to them.

V. Conclusion: Current Rules and Existing Law Protects Claimants and Defendants Alike; No Change Is Necessary

The combination of *Laurence, supra,* and existing procedural mechanisms already provide adequate protection for claimants while preserving constitutional due process rights for individual defendants. Under *Laurence*, *supra*, claimants who properly serve governmental entities can pursue respondeat superior claims even if individual employees are not served. This protects claimants' access to justice while preserving individual employees' due process rights when they face personal liability in individual capacity claims.

The proposed rules are unnecessary for vicarious liability claims, unconstitutional for individual claims, contradict clear statutory requirements of the notice of claim statute (A.R.S. § 12-821.01), and would create practical problems including unreliable email service presumptions, burdensome administrative requirements,

and opportunities for gaming the system. Individual service requirements for individual capacity claims remain essential.

For these reasons, this Court should deny the Petition to amend Rules 4.1, 4.2, and 5, and should decline to adopt the proposed Rule 4.3.

RESPECTFULLY SUBMITTED this 6th day of February, 2026.

/s/ Lori S. Davis
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