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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND COURT
RULES REGARDING SERVICE OF
PROCESS OF NOTICE OF CLAIM
UPON GOVERNMENT OFFICIALS,

Supreme Court No. R-25-0048

**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 Supreme Court of Arizona, Justin M. Ackerman and Ashley E. Caballero-Daltrey on behalf of the Arizona County Insurance Pool (“ACIP”) and the Arizona Municipal Risk Retention Pool (“AMRRP”), 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.

Put simply, the proposed amendments contravene the plain language of the notice of claim statute, A.R.S. § 12-821.01, and longstanding Arizona jurisprudence interpreting and applying this statute. The amendments would also create significant and unwarranted problems for municipalities throughout Arizona in its implementation. Moreover, as noted by the City of Scottsdale's comment, *Laurence v. Salt River Project Agricultural Improvement & Power District*, 255 Ariz. 95 (2023) addresses many of the Petition's concerns without requiring any modification of existing rules impacting notice of claim compliance. Thus, the Petition not only seeks to solve a problem that does not exist but also risks upending well-established law by this Court that provides significant guidance for compliance with the notice of claim statute.

For these reasons, and those more fully set forth below, the Court should deny the Petition in full.

I. THE PETITION'S PROPOSALS.

The Petition seeks to amend Arizona's service rules in order to, in the Petitioner's eyes, make service of a notice of claim easier.

First, the Petition seeks to modify [Rules 4.1, 4.2](#), and [Rule 5](#) to make them *inapplicable* to service of a notice of claim under [A.R.S. § 12-821.01](#). [Petition App'x A, (Proposed Rule Changes to [Rules 4.1, 4.2](#) and [5](#))].

Second, the Petitions seeks to create an entirely new service rule specific to notices of claim, Rule 4.3, which provides, among many new things, as follows:

- Service on a governmental entity is also service on its employees. [Proposed Rule 4.3(c), (f)].
- Obligating public entities, public schools and public employees to publish up-to-date information on their website on how a person may serve a notice of claim upon the public entity, public school, or any public employees, including that person's email address and mailing address. [Proposed Rule 4.3(d)(1)].
- Requiring the Arizona Supreme Court to maintain an up-to-date directory of all public entities, public schools, and public employees and associated information that is searchable for notice of claim service. [Proposed Rule 4.3(e)].
- Failure of a public entity or employee to provide this information "shall" be construed as designating the Attorney General as the agent for notice of claim service for the entity and its employees. [Proposed Rule 4.3(d)(2), (e)]. The provision "shall be construed liberally in favor of notice of claim claimant [*sic*] and strictly against the public entity, public school or public employee." [*Id.*].

- Service of a notice of claim may be accomplished by e-mail and not personal service on the appropriate entity or person. [Proposed Rule 4.3(h)].¹

As more fully explained below, these proposed modifications create a host of issues and should be entirely rejected.

II. THE RULE CHANGE PETITION SHOULD BE DENIED.

A. The Petition Fails To Articulate Why The Proposed Modifications Are Warranted.

As a threshold issue, the Petition raises concerns regarding service of a notice of claim but fails to meaningfully identify *why* any of the specific rule changes proposed in the attached appendix warrant implementation. [Compare Petition at 1-4 with App'x A]. Specifically, the Petition fails to expressly set forth, as required by the Rules, why the modifications and additions to the Rules it proposes are warranted. See [Ariz. R. Sup. Ct. 28\(a\)\(4\)\(A\)\(i\)](#) (requiring the petition to “explain why the Court should adopt, amend, or abrogate rules”). For this reason alone, the Petition fails to comply

¹ Under the most liberal reading of Proposed Rule 4.3(g), it appears that the Rule allows for service by e-mail, as e-mail is a method described in subsections (d), (e), and (f), and subsection (h) discusses e-mail. But under a strict reading of Proposed Rule 4.3, it does not appear that any subsection actually “prescribe[s]” e-mail as an authorized form of service.

with this Court's Rules and should be denied outright as is the public is simply left guessing as to why the vast majority of the proposed modifications are warranted and under what authority they should be made.

B. The Legislature Intended For Service of a Notice of Claim To Mirror Service of a Lawsuit And The Proposed Rules Inject Improper Distinctions.

The Legislature—not the Court, and not the Rulemaking process—directs “by law in what manner and in what courts suits may be brought against the state.” [Ariz. Const. art. 4, pt. 2, § 18](#). And only the Legislature has the authority “to define those instances in which public entities and employees are entitled to immunity.” [Redgrave v. Ducey](#), 251 Ariz. 451, 453 ¶ 6 (2021) (quoting [Clouse ex rel. Clouse v. State](#), 199 Ariz. 196, 203 ¶ 25 (2001)). This Court has explained that the notice of claim statute is part of a “comprehensive statutory scheme governing actions against public entities and employees,” which replaced the broad common-law doctrine of sovereign immunity in place before. [City Of Phoenix v. Fields](#), 219 Ariz. 568, 571 ¶¶ 7-9 (2009). It is thus the Legislature’s determination of “in what manner and in what courts suits may be brought against the state,” as it creates specific jurisdictional prerequisites to filing suit. [See Ariz. Const. art. 4, pt. 2, § 18](#); [see also A.R.S. § 12-821.01](#).

Consistent with the Constitution, only the Legislature can make changes to those requirements. Although the notice of claim statute refers to the Arizona Rules of Civil Procedure rather than stating exactly how to serve the government, *see* [A.R.S. § 12-821.01\(A\)](#) (“Persons who have claims against a public entity, public school or a public employee 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...”), the Rules have never contained separate (or lesser) requirements for service of a notice of claim. Instead, the statute evinces an intent that the notice of claim should be served in the *same way* as any lawsuit. Otherwise, the Legislature would have specified how to serve a notice of claim.

The proposed rules depart for this directive by attempting to carve out notices of claim from the Rules of Civil Procedure as written and, instead, create an entirely new framework applicable *only* to notices of claim. The Legislature did not intend for such a result, and this Court should reject attempts to create such a distinction outside of the legislative process.

C. The Petition’s Proposed Changes Are Inconsistent With Established Arizona Law.

This Court has long held that litigants must substantially comply with the notice of claim statute. The proposed rules, however, seek to avoid (and therefore overturn) long-established precedent through the rulemaking process rather than through arguments before this Court (or, as above, through the Legislature).

1. The Proposed Rules Remove Of The Requirement Of Strict Compliance With The Notice Of Claim Statute.

First, this Court has long held that a claimant must strictly comply with Arizona’s notice of claim statute. *See, e.g., City of Mesa v. Ryan*, 258 Ariz. 297, 300 ¶ 9 (2024) (“The notice of claim requirements serve important functions. . . . To further these goals, claimants must strictly comply with the statute.”); *Falcon ex rel. Sandoval v. Maricopa County*, 213 Ariz. 525, 527 ¶ 10 (2006) (“Actual notice and substantial compliance do not excuse failure to comply with the statutory requirements of A.R.S. § 12-821.01(A).”); *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, 296, ¶ 9 (2007) (stating same).

All of this Court’s cases within the last five years involving notice of claim requirements have affirmed this requirement and, indeed, narrowed

what it means for a claimant to strictly comply. See e.g., *Sanchez v. Maricopa County*, 572 P.3d 101, 111 ¶ 32 (Ariz. 2025) (failure to serve sheriff rather than county was fatal to claims); *Ryan*, 258 Ariz. at 300–01 ¶¶ 13–16 (offer to settle for “applicable policy limits” is not a sum certain for the purposes of a notice of claim); *James v. City of Peoria*, 253 Ariz. 301, 306 ¶ 25 (2022) (claimant may not attempt to unilaterally shorten the sixty-day response deadline).

This Court has also held that compliance with the notice of claim statute is the claimant’s burden, not the public entity or employee’s burden. See *James*, 253 Ariz. at 304 ¶ 18 (“§ 12-821.01(A) delineates the requirements a claimant must follow to timely file and serve a valid notice of claim” (emphasis added)).

Finally, Arizona appellate courts have repeatedly recognized that a public entity or employee is not duty bound to assist a claimant with compliance with the notice of claim statute. See *Backus v. State*, 220 Ariz. 101, 107 ¶ 28 (2009) (noting a public entity is not required to obtain more facts to evaluate a claim); *Terborg v. Town of Payson*, 581 P.3d 735, 738 ¶ 7 n. 2 (App. 2025) (“our supreme court has held that public entities do not have a duty to assist claimants with statutory compliance” (citing *Backus*, 220 Ariz. at 107 ¶ 28)); *Yahweh v. City of Phoenix*, 243 Ariz. 21, 23 ¶ 12 (App. 2017) (“Public

entities in Arizona are not duty-bound to assist claimants with statutory compliance.”).

Proposed Rule 4.3 overrules this Court’s precedent that a claimant strictly comply with the notice of claim statute and that the claimant bear the burden of doing so. The Rule expressly states that failure of a public entity or employee to provide information on service “shall” be construed as designating the attorney general as their agent for notice of claim service, and that any failure to provide information “shall be construed liberally in favor of notice of claim claimant and strictly against the public entity, public school or public employee.” [Proposed Rule 4.3(d)(2), (e)]. Proposed Rule 4.3 also obligates public entities and employees to affirmatively provide up to date information on that person’s email and mailing address. [Proposed Rule 4.3(d)(1), (e)]. These requirements run afoul of longstanding Arizona jurisprudence that a claimant must strictly comply with the notice of claim requirements, notice of claim compliance is a claimant’s burden, and governmental entities are not duty bound to assist in notice of claim compliance.

2. The Proposed Rules Improperly Remove The Requirement To Individually Serve Public Employees.

This Court, the Arizona Court of Appeals, and federal district courts interpreting Arizona law on the notice of claim statute have all unanimously held that service of a notice of claim for an individual employee *must* be on the individual employee and not on their employer or their place of business. See e.g., *Banner Univ. Med. Ctr. Tucson Campus, LLC v. Gordon*, 252 Ariz. 264, 265 ¶ 2 (2022) (“Because the doctors were public employees, the HARRISES were required to serve each of them with a notice of claim, which they failed to do.”); *Crum v. Superior Court*, 186 Ariz. 351, 352 (App. 1996) (“A claimant who asserts that a public employee’s conduct giving rise to a claim for damages was committed within the course and scope of employment must give notice of the claim to *both* the employee individually and to his employer.”); *McCarthy v. Scottsdale Unified Sch. Dist. No. 48*, 409 F. Supp. 3d 789, 813 (D. Ariz. 2019) (“When a claimant asserts a claim against a public employee acting within the course and scope of his or her employment, the

claimant must give notice of the claim to both the employee and to the employer.”).

This is important. In the context of a notice of claim, “the purpose of notice is to allow the public employee and his employer to investigate and assess their liability, to permit the possibility of settlement prior to litigation and to assist the public entity in financial planning and budgeting.” *Crum v. Superior Court*, 186 Ariz. 351, 352 (App. 1996) (emphasis added). It is for these reasons that a claimant’s failure to properly serve a notice of claim on an employee is fatal to any subsequent claim against that employee. *Ryan*, 258 Ariz. at 298 ¶ 1 (“If a notice of claim fails to comply with § 12-821.01(A), the person is barred from suing the public entity *or employee* on the claim.” (emphasis added)).

The Petition’s request to alter existing Rules on individual service of an employee under [Rules 4.1](#), [4.2](#) and [5](#) as well as add Rule 4.3 expressly authorizing service of a notice of claim on an employer for an employee contravenes as longstanding Arizona law interpreting the notice of claim statute and takes away an employee’s actual notice of the claim—which is contrary to both the statute and law interpreting it.

In sum, the Petition's proposed modifications flips this Court's longstanding precedent on its head by excising a claimant's burden to establish strict compliance with the notice of claim statute, putting the burden of compliance on the public entity or employee, requiring the public entity or employee to affirmatively assist in notice of claim compliance by providing service information or risk defaulting service to the Attorney General, and removing an individual's service of the notice of claim. The Petition should be denied for these reasons alone.

D. The Petition's Proposed Rule 4.3 Is Not Necessary In Light Of Laurence.

The Petition's main concern seems to be that it is difficult to serve individual public entities or employees because service can at times require the expense of an investigator or information that is not necessarily publicly available. As a threshold issue, these concerns are true for *any* prospective litigant who seeks to file a civil suit against any individual or entity. Moreover, this Court has long recognized that concern is not so insurmountable that amendments such as those proposed by the Petition are warranted. *See Deer Valley Unified Sch. Dist. No. 97*, 214 Ariz. at 296 ¶ 9 (explaining that claimants must strictly comply with the statute but that

“[c]ompliance with this statute is not difficult”). Rather, it may simply be the cost of initiating a lawsuit for a prospective litigant to investigate potential defendants in order to serve their complaint. There is nothing special about a notice of claim in this regard and there is no reason the Court should make any different determination in this arena.

In any event, the Petition’s concerns about difficulties in locating individual employees for service have largely been ameliorated in light of this Court’s ruling in *Laurence v. Salt River Project Agricultural Improvement & Power District*, 255 Ariz. 95 (2023). In *Laurence*, this Court concluded that a court need not dismiss the claim against a public entity simply because a claim against the employee was dismissed for reasons unrelated to the merits, such as the filing of a notice of claim. *Id.* at 97 ¶ 1. As the City of Scottsdale’s comment aptly points out, a plaintiff can simply sue the public entity rather than serving and suing the individual employees. [See City of Scottsdale Cmt. at 2–3.] Moreover, as this Court has before recognized, the public entity is typically liable for the expenses of its employees acting within the course and scope of their employment, so there is no concern that plaintiffs will lack recourse. See *Sanchez*, 572 P.3d at, 110–11 ¶ 36.

But even if *Laurence* did not directly address this issue, Rule 4.1(k)'s allowance of service by alternative means is an existing avenue to address service issues in a case-by-case basis. A claimant may file suit and seek assistance with Rule 4.1(k) and then stay the suit pending resolution of the notice of claim. See *Boyd v. State*, 256 Ariz. 468, 474-75 ¶¶ 25-29 (App. 2023) (explaining that a claimant can file suit after filing notice of claim and need not wait for sixty days to pass). Thus, there is simply no need for the proposed rule changes.

E. The Petition's Proposed Rule Changes Raise A Host Of Unnecessary Practical Concerns And Issues.

The proposed rules also create a host of practical concerns for entities. Requiring a government entity to create a database of information regarding email and personal service locations is not only impractical, but also likely falls outside of the Supreme Court's rulemaking abilities, given that it would impose a financial burden on public entities and individual public employees to maintain and update that database and keep it available for the public. Indeed, doing so would likely violate existing Arizona law for certain employees, such as law enforcement officers. See e.g., A.R.S. § 39-

123(A) (exempting disclosing a law enforcement's home address or telephone number from a public records request).

Moreover, the proposed rules contain no discussion of how long the entity must provide information for a former employee. Public entities experience a lot of turnover of employees, and employees regularly change positions, move, or retire. It would create a procedural morass to require a governmental entity and this Court to maintain accurate information on all public employees and entities at all times simply to ease the burden of a claimant's notice of claim compliance—which at all times remains the burden of the claimant and not the governmental entity or employee.

Additionally, although courts occasionally allow e-mail where other service is impracticable, allowing e-mail as a matter of course inserts other practicable problems into the process. Courts that allow service by e-mail typically require a showing that e-mail would actually be a *viable* method of service on the specific facts of case, *see, e.g., Ruffino v. Lokosky*, 245 Ariz. 165, 170 ¶ 16 (App. 2018), but those decisions have not analyzed the problems that occur as a result of an increase in spam e-mails, hackings, outages, and the uncertainty that “an e-mail sent” is in fact “an e-mail received.” *See* Proposed Rule 4.3(h). The proposed rules fail to recognize this

at all and, instead, create a legal fiction where that does not occur. Indeed, the proposed rules disregard the possibility of *any* technical problem. Thus, claimants could argue at any time that they did send an email, even if the entity or employee *never in fact received a copy*. In so doing, claimants entirely avoid and subvert the focus of the notice of claim statute—to permit assessment of a pre-suit demand and potential settlement of a claim prior to the filing of a lawsuit. Whatever the merits of e-mail service might be, a rule that allows for completely one-sided proof of service that must be accepted by a court creates more problems than it solves, particularly in light of the intent of the notice of claim statute.

III. CONCLUSION.

The current service rules and existing case law provide adequate protections for claimants seeking to serve a notice of claim on public entities and employees and, as this Court has recognized, are not difficult to comply with. No change in the rules are necessary. Moreover, the proposed rules overturn this Court's precedent and inject a myriad practical concerns in the process, all in favor of the claimant. That is contrary to common sense and longstanding Arizona precedent on how this Court has articulated notice of

claim compliance. Therefore, 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.

DATED this 28th day of April, 2026.

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