

GILBERT TOWN ATTORNEY'S OFFICE  
Christopher W. Payne (SBN: 025674)  
Kole Lyons (SBN: 037976)  
50 E. Civic Center Dr.  
Gilbert, Arizona 85296  
480-503-6107  
[townattorney@gilbertaz.gov](mailto:townattorney@gilbertaz.gov)

**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 the Supreme Court of Arizona, **Chris Payne, Town Attorney, and Kole Lyons, Assistant Town Attorney, Gilbert Town 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 (the "Petition") regarding service of notices of claim pursuant to A.R.S. § 12-821.01.

The proposed rule conflicts with the substantive plain language of A.R.S. § 12-821.01. The Petition does not adequately address public employees' right to due process. And the proposed Administrative Director Service Directory (the

“Directory”) upsets the balance of powers between the judicial and executive branches of the State. The Petition serves only to disrupt the careful balance of interests that the Arizona State Legislature and this Court have crafted.<sup>1</sup>

**I. Proposed Rule 4.3 Does Not Align with the Plain Language of A.R.S. § 12-821.01**

The text of A.R.S. § 12-821.01 is clear that notices of claim are to be served on three distinct categories of organizations or individuals. Rule 4.3 effectively removes this distinction. This removal is in direct conflict with the statutory text.

A.R.S. § 12-821.01 expressly separates service for public entities, public schools, and public employees to ensure that each individual and entity implicated by a claim is given actual service and receives notice. The relevant language from A.R.S. § 12-821.01(A) is as follows:

***“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 within one hundred eighty days after the cause of action accrues.”*** Ariz. Rev. Stat. Ann. § 12-821.01.

---

<sup>1</sup> Proposed Rule 4.3 is also independently unworkable. For example, it would require all public entities to remain open Monday through Friday, 8:00 AM to 5:00 PM, except on “Arizona Supreme Court holidays” — a mandate that conflicts with the operational realities of the Town of Gilbert and many other Arizona municipalities that have adopted four-day workweeks and observe different holiday schedules. Forcing compliance would impose significant and unjustified costs on those entities. More fundamentally, dictating municipal governments' operating hours falls outside the Judiciary's rulemaking authority.

In drafting this language, the Legislature carefully balanced the interests of prospective litigants, public entities, and individual public employees. A.R.S. 12-821.01 allows public entities to promptly investigate claims, facilitate early settlements, enable entities to efficiently budget to protect taxpayer dollars, and protect the individual rights of public employees. The proposed rule would inappropriately usurp this interest-balancing through procedural rulemaking.

The proposed Rule 4.3 makes sweeping changes to service of notices of claims, such as redefining who accepts service, designating the Attorney General as an authorized agent, presenting Directory information as always accurate (despite actual accuracy), and deeming service via email received at the time it was sent, regardless of whether the email was actually received by the intended party.<sup>2</sup> Each of these changes completely usurps the careful legislative balancing, which is clearly reflective in the statutory text, in favor of the prospective plaintiff and against the public entities and public employees.

This Court has recognized the purpose and importance of the language of A.R.S. § 12–821.01 in *Deer Valley Unified School District No. 97 v. Houser*, 214

---

<sup>2</sup> For service upon public entities, there is a proposed addition to Rules 4.1, 4.2, and 5 to exempt notices of claim. Because Rule 4.3 is in conflict with A.R.S. § 12-821.01, the amendments to Rules 4.1, 4.2, and 5 should be rejected because, without Rule 4.3 accompanying them, there would be no guidance in the Arizona Rules of Civil Procedure governing service for notice of claims.

Ariz. 293, 298 (2007). There, it emphasized that the Legislature, through the 1994 addition of A.R.S. § 12–821.01 to A.R.S. § 12–821, “constitutes the most detailed effort by the Legislature to define the information necessary to provide a valid notice of claim.” *Id.*

This Court further recognized the careful balancing at play when it held that “actual notice and substantial compliance do not excuse failure to comply with the statutory requirements of A.R.S. § 12–821.01(A).” *Falcon ex rel. Sandoval v. Maricopa Cnty.*, 213 Ariz. 525, 527 (2006). This Court emphasized in *Falcon* the importance, under A.R.S. § 12–821.01(A), that the public entity has the opportunity to consider and possibly settle claims before litigation. *Id.* Essentially, this Court aimed to protect the language of A.R.S. § 12–821.01(A) by interpreting the Arizona Rules of Civil Procedure in a manner consistent with the statute, and did not allow the Court’s rule to supersede this language.

Certainly, when the Legislature adopted A.R.S. § 12-821.01, it did so with the understanding that the Arizona Rules of Civil Procedure requirements for service satisfied due process rights of individual public employees. *See Planned Parenthood Ariz., Inc. v. Mayes*, 257 Ariz. 137, 142 (2024) (“This analytical approach is premised on foundational trust in legislative competency, and this Court ‘presume[s] that the Legislature knows the existing laws when it enacts or modifies a statute.’”).

As evidence of the Legislature’s understanding of individual due process concerns, A.R.S. § 12-821.01 distinguishes claims against public entities, public schools, and public employees as three distinct groups. In direct contravention of that language, the proposed Rule 4.3(f) provides that “service upon a government entity is service upon its employees.” This would effectively rewrite A.R.S. § 12-821.01 to remove the distinction the Legislature created.

A.R.S. § 12-821.01 is not the only statute implicated by the proposed rule change. A.R.S. §§ 11-483, 11-484, 12-290, 16-153, 28-454, and 39-123 govern information identifying eligible persons and aim to protect the personal information of those public employees.<sup>3</sup>

A.R.S. § 39-123 outlines that a governmental entity may only disclose the home address or phone number of certain employees in two specific instances: with the consent of the employee, and after determining that the release will not create a risk of injury to the person or the person’s family. For example, if, as required under the proposed rule, Gilbert police officers had to provide their home addresses to the Town of Gilbert for posting on the website for Notice of Claim purposes, the Town would have to violate A.R.S. § 39-123 and frustrate the purposes of the listed statutes

---

<sup>3</sup> Sections 11-483, 11-484, 12-290, and 28-454 provide that, for certain public employees, records including personal information should be redacted and sealed from the directories of the county recorder, county assessor and treasurer, superior court, voter registration, and department of transportation, respectively.

passed by the Legislature intended to protect police officers and other public employees. Such a rewrite of these affected statutes cannot be accomplished through procedural rulemaking by the Judiciary.

## **II. Amendment of A.R.S. § 12-821.01 is the Proper Action to address Substantive changes in the Law.**

Procedural rulemaking is within the Judiciary's rulemaking authority, and changes to substantive law are left to the Legislature. Because access to justice for claimants, protection of public employees, and the fiscal and administrative interests of public entities are at issue with this proposed rule, amendment of A.R.S. § 12-821.01 would be the proper action.

In *Backus v. State*, this Court analyzed A.R.S. § 12-821.01 and stated that when statutory language admits only one interpretation, the Court will go no further in its analysis. *Backus v. State*, 220 Ariz. 101, 104 (2009). As discussed in Section I of this comment, the statutory language of A.R.S. § 12-821.01 is unambiguous. There is simply no interpretive gap for this Court to fill through rulemaking.

The Petition is not a clarification of current procedure; it is a complete and improper overhaul of A.R.S. § 12-821.01. It implements new parameters for serving a notice of claim that extend far beyond what the statute outlines. Therefore, legislative amendment of A.R.S. § 12-821.01 would be the only proper course of action to address the issues raised regarding service of notice of claims on public

entities, *not* an exercise of rulemaking authority by the Judiciary. The Judiciary is ill-suited to balance the competing interests of the state’s entire public workforce, including certain employees whose personal information is already protected under Arizona law. While the various statutory conflicts alone warrant denial of the Petition, the proposed rule’s constitutional infirmities require the same result.

### **III. The Petition does not Address the Due Process Rights of Public Employees**

When a public employee’s personal assets are at stake, the Due Process clauses of the Arizona and U.S. Constitutions demand actual notice. The proposed Rule 4.3 provides no assurance of it. Especially when viewed in light of the proposed Rule 4.3(c) stating that “[s]ervice upon a government entity is also service upon its employees.” This provision could mean that service is deemed complete even if it was never actually received. Public employees, like all individuals, are entitled to receive actual notice.

In 1991, the Arizona Court of Appeals discussed the difference between “official capacity” and “individual capacity” claims in *Carrillo v. State*, 169 Ariz. 126, 129 (Ariz. Ct. App. 1991). There, the court stated that “as long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.” *Id.* The distinction is that a claim brought against a person in their “official capacity” means that the

claim is against the government entity's assets. *Id.* A claim brought against a person in an "individual capacity" is only against the person's personal assets. *Id.* The distinction between individual and official capacity is extremely important because it threatens an individual's personal assets. The proposed rule threatens to blur that distinction by deeming service on an entity as service on every public employee individually.

The Due Process clauses of the Arizona and U.S. Constitutions require more. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is 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." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950); *see also In re the Rights ex rel. Gila River*, 171 Ariz. 230, 235-36 (1992).

With numerous service options listed in the proposed rules, it will be difficult to track who received the notice and prove that the individual served was the correct person. There is no obligation for a public entity to notify a public employee that it has received a notice, and there is no obligation of the Attorney General to notify a public entity or public employee that it has been served as an "agent" of any given entity or person. These scenarios are just a few that could cause confusion under the proposed rules.

As noted above, due process requires that individuals, at a minimum, must be apprised of the pendency of an action. *Mullane*, 339 U.S. at 314. By enacting the notice-of-claim process, the Legislature added safeguards for public employees facing potential employment-related judgments. *Crum v. Superior Court*, 186 Ariz. 351, 352 (Ariz. Ct. App. 1996) (“The purpose of the notice is to allow the public employee *and* his employer to investigate and assess *their* liability...” (emphasis added)). Any proposed change to these rules would not override the constitutional mandate for public employees to receive actual notice when their personal liability is at stake.<sup>4</sup> See *Scheehle v. Justices of the Supreme Court of the State of Arizona*, 211 Ariz. 282, 298 (2005) (“Court rules and comments thereto cannot be given effect if they conflict with valid provisions of the constitution.”). As such, for public entities to comply with this proposal’s mandate, all information listed in 4.3(d) would need to be publicly posted on city and town websites, and in a directory maintained by the administrative director of this Court, for hundreds of thousands of public employees across the state.

///

---

<sup>4</sup> The Town of Gilbert, like many Arizona municipalities, is obligated by municipal code to defend its officials and employees against claims except those arising from willful misconduct, fraud, or criminal conduct. Proposed Rule 4.3 would afford public employees facing personal liability fewer due process protections than any other litigant.

Further, if the administrative director is unable to obtain up-to-date information, the proposed rule sets out a two-step process. Under proposed Rule 4.3(d)(2), if a public entity or employee refuses to post their personal identifying information, they “designat[e] the attorney general as their agent for notice of claim service.” Then, proposed Rule 4.3(e)(5) requires the director to turn to the Attorney General to obtain this information on how to serve herself, including in instances where she is acting as an “agent” for service for a public employee. If the Attorney General is nonresponsive or refuses to cooperate, the proposed rule allows the administrative director to make a “best guess” of the accurate information for service. Designating the Attorney General as an agent for service for hundreds of thousands of public employees, then allowing service information to be posted based on a “best guess,” cannot be said to make any individual reasonably apprised of a pending proceeding.

Instead, it will invite litigation. Notice-of-claim arguments will likely increase dramatically, and public entities and courts throughout the state will incur increased expenses to adjudicate these disputes. Judicial resources and public funds should not be prioritized on adjudicating arguments when the Legislature has acted to avoid this exact scenario.

Moreover, proposed Rule 4.3(h) outlines that “an email sent is an email received.” Such a scheme is not consistent with this Court’s precedents related to alternative modes of service and due process. For example, this Court held in *Postal*

*Instant Press, Inc. v. Corral Restaurants, Inc.*, that “actual service is not complete under Rule 4.1(c) when the party to whom service is directed either fails, refuses, or is never given the requisite opportunity to execute a formal “notice and acknowledgment of receipt ... under oath or affirmation.” *Postal Instant Press, Inc. v. Corral Restaurants, Inc.*, 186 Ariz. 535, 538 (1996). The holding in *Postal Instant Press, Inc.* outlines how courts have historically viewed “actual service” in the context of alternative forms of service. Service via email under proposed Rule 4.3 would not comply with the “actual service” requirement outlined in the *Postal* case.

Finally, under the current Rule 4.1(c), if a claimant wants to avoid physical service, they need only obtain a waiver of service as outlined in the Rule. *Ariz. R. Civ. P. 4.1(c)*. Rule 4.1(c)(1)(G) outlines that the waiver accompanying the pleading may be sent by “first class mail or other reliable means.” *Ariz. R. Civ. P. 4.1(c)(1)(G)*. There are already avenues to waive physical service. The current framework under Rule 4.1 strikes an important balance to protect due process rights. It ensures that claimants know whom they can serve and that the entity knows whom it has designated to accept service.

To the contrary, “an email sent is an email received” would not satisfy the reasonable notice requirements of the due process clauses of the Arizona and United States Constitutions and would be contrary to this Court’s precedent. The Arizona

Constitution may present additional hurdles for the proposed rule beyond due process, based on the proposed Directory.

#### **IV. An Expansive Administrative Director Service Directory is an Executive, not a Judicial Function**

The proposed Directory, stewarded by this Court, would impose a substantial administrative burden on the judicial branch. The exact number of public employees covered by this proposed rule may be difficult to quantify, but it is safe to assume it is in the hundreds of thousands.<sup>5</sup> Under the proposed Rule 4.3(e), the Directory maintained by this Court must include personal identifying information for every single public employee. Imposing an administrative task of this magnitude on the Arizona court system would require the Judiciary to assume a more executive role than its intended one.

Under Article VI, §§ 3 and 7, of the Arizona Constitution, this Court is delegated administrative supervision over all courts of the state, along with the authority to

---

<sup>5</sup> *About HRD Human Resources*, ARIZONA DEPARTMENT OF ADMINISTRATION HUMAN RESOURCES, <https://hr.az.gov/about> (last visited March 9, 2026) (accounting for 34,000 state employees); *AZ School Report Cards*, ARIZONA DEPARTMENT OF EDUCATION, <https://azreportcards.azed.gov/state-reports> (last visited March 9, 2026) (accounting for 49,350 teachers across the state, 11,956 teachers working in charter schools, and an additional 58,072 certified teachers serving in positions outside of the classroom); *Arizona State and Local Government Information*, ASU LIBRARY GUIDES, <https://libguides.asu.edu/salad/cities> (last visited March 9, 2026) (listing Arizona's 91 cities and towns).

appoint an administrative director and staff to assist in these duties. This entails supervision, not the function of data keeping or acting as an executive registry. Section 5 of the same Article VI grants this Court the power to make rules. The power to make rules does not extend to creating quasi-executive administrative bodies whose administrative burden is out of proportion to the benefit.

In *Ahearn v. Bailey*, this Court emphasized that the Legislative, Executive, and Judicial branches must remain separate and shall not exercise powers that do not belong to their respective branches. *Ahearn v. Bailey*, 104 Ariz. 250, 252 (1969). The unique duties of this Court, delegated under the Arizona Constitution, consist of *administrative supervisory authority* over all lower courts and the authority to interpret the law, which separates the Judiciary from the Legislature and Executive. *Scheehle*, 211 Ariz. at 297 (finding that disqualification of the justices of this Court cannot result in an abdication of this Court's constitutional duties, only when this Court is exercising one of its constitutional responsibilities).

Moreover, the Directory would serve as a vessel to facilitate all notice-of-claim service of process currently handled by individual public entities. The Directory and its substance will likely result in legal challenges being brought against this Court acting in its extraconstitutional capacity as the holder of the Directory. It is unclear which branch of government would resolve these disputes,

where disqualification may be warranted because this Court is not performing one of its constitutional duties. *See id.*

Under the Arizona Constitution, the Judiciary's role is adjudication and the supervision of the state's courts. The responsibility for establishing and maintaining an executive registry of this size belongs to the offices of the Legislature and the Governor, respectively. *Ariz. Const. art. III.* Using this Court in an administrative capacity, as proposed, threatens to upset the carefully balanced separation of powers embodied in the Arizona Constitution. To implement a burden of this caliber when the result would complicate a system that does what it was designed to do under A.R.S. § 12-821.01 is simply unwarranted and unnecessary.

## **V. Conclusion**

The proposed rule changes and additional proposed rule are unnecessary. The Petition conflicts with the substantive provisions A.R.S. § 12-821.01, sets aside the due process rights of public employees, and upsets the separation of powers between the judicial and executive branches of the State.

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 28<sup>th</sup> day of April, 2026.

By *Kole Lyons*  
Christopher W. Payne, Town Attorney  
Kole Lyons, Assistant Town Attorney  
Gilbert Town Attorney's Office  
50 E. Civic Center Dr.  
Gilbert, AZ 85296

COPY emailed this 28<sup>th</sup> day  
of April, 2026 to:

Eli Dalton-Webb  
5009 E. Ironwood Circle  
Sierra Vista, AZ 85650  
[Dw4az@proton.me](mailto:Dw4az@proton.me)

By: */s/ Kristen Duggins*  
Town of Gilbert Attorney's Office