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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, Rules of the Supreme Court, Michael D. Bailey, City Attorney, and Ashley E. Wallace, Assistant City Attorney, Office of the City Attorney, City of Glendale, respectfully submit this Comment for the Court's consideration. This comment is in opposition to the Petition to amend Arizona Rules of Civil Procedure, Rules 4.1, 4.2, and 5, and to add Rule 4.3 regarding service of notice of claim pursuant to A.R.S. § 12-821.01. This comment is offered in addition to the issues raised by the City of Scottsdale, the Arizona School Risk Retention Trust, Inc., the Arizona County Insurance Pool, the Arizona Municipal Risk

Retention Pool, and the Town of Gilbert.

I. The Current Rules are Unambiguous and Not Difficult to Follow.

Arizona courts have established that compliance with A.R.S. § 12-821.01 “... is not difficult.” *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, 296, ¶ 9, 152 P.3d 490, 493 (2007). Service of a notice of claim under A.R.S. § 12-821.01, is a “‘mandatory’ and ‘essential’ *prerequisite*” for filing a lawsuit against a public entity or public employee. *Martineau v. Maricopa Cnty.*, 207 Ariz. 332, 334, ¶ 10, 86 P.3d 912, 914 (App. 2004) citing *Pritchard v. State*, 163 Ariz. 427, 432, 788 P.2d 1178, 1183 (1990) (emphasis added). The statute as enacted by the legislature is clear—service of a notice of claim pursuant to A.R.S. § 12-821.01 must be completed “as set forth in the Arizona rules of civil procedure.” A.R.S. § 12-821.01. Arizona courts have also made it clear that “[p]ublic entities in Arizona are not duty-bound to assist claimants with statutory compliance.” *Yahweh v. City of Phoenix*, 243 Ariz. 21, 23, ¶ 12, 400 P.3d 445, 447 (App. 2017). The proposed amendments to the Rules of Civil Procedure are contrary to case law, the constitution, and statute, as well as being unnecessary and impractical.

Rule 4.1(h) of the Arizona Rules of Civil Procedure clearly states:

(h) Serving a Governmental Entity. If a governmental entity has the legal capacity to be sued and it has not waived service under Rule 4.1(c), it may be served by delivering a copy of the summons and the pleading being served to the following individuals:

(1) for service on the State of Arizona, the Attorney General;

- (2) for service on a county, the Board of Supervisors clerk for that county;
- (3) for service on a municipal corporation, the clerk of that municipal corporation; and
- (4) for service on any other governmental entity:
 - (A) the individual designated by the entity, as required by statute, to receive service of process; or
 - (B) if the entity has not designated a person to receive service of process, then the entity's chief executive officer(s), or, alternatively, its official secretary, clerk, or recording officer.

Ariz. R. Civ. P. 4.1(h). Moreover, Rule 4.1(d) clearly sets forth the requirements for serving an individual:

(d) Serving an Individual. Unless Rule 4.1(c), (e), (f), or (g) applies, an individual may be served by:

- (1) delivering a copy of the summons and the pleading being served to that individual personally;
- (2) leaving a copy of each at that individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
- (3) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Ariz. R. Civ. P. 4.1(d). These Rules are clear and unambiguous and are *regularly* complied with by not only lawyers representing clients, but also individuals representing themselves, making the proposed amendments unnecessary.

II. The Proposed Amendments Create Logistical Problems, Impede Upon Government Employees' Fundamental Rights, and Exceed the Scope of the Court's Rule-Making Authority.

The proposed amendments would allow service upon a government employee to be completed by serving the employing government entity, however that would create situations that are untenable. Are government employees then required to give

their employer blanket authorization to accept notices of claim on their behalf as a condition of employment? What if the employee is no longer employed by the subject government entity at the time of service? What if the employee has passed away? Additionally, what if there is a conflict between the government entity and the government employee regarding the alleged incident underlying the notice of claim? These amendments may also result in, for example, a non-lawyer determining whether a document that is being served is a notice of claim or some other legal document that may or may not be related to an employee's employment with the government entity. This proposed method of service will create innumerable issues for both government employers and employees.

i. The Proposed Amendments Create Due Process Concerns.

The proposed amendments would also require government employees to forfeit their due process rights in situations where they are required to be individually or personally served because a claimant is seeking to hold them personally liable. It would be unconscionable to allow a claimant to recover against a government employee's personal assets without providing that employee with the due process that is required under the Constitution. Case law is clear that "[a]n 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, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950); *see also Malnar v. Joice*, 236 Ariz. 170, 172, ¶ 7, 337 P.3d 43, 45 (2014); and Ariz. R. Civ. P. 12(b)(4) and (5) (Insufficient process or insufficient service of process can be used as the basis to dismiss a lawsuit). The purpose of the notice of claim statute “. . . 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 In & For Cnty. of Maricopa*, 186 Ariz. 351, 352, 922 P.2d 316, 317 (App. 1996) (emphasis added); *see also City of Mesa v. Ryan in & for Cnty. of Maricopa*, 557 P.3d at 319. The proposed amendments fly in the face of A.R.S. 12-821.01 because they do not ensure that employees actually receive the notice of claim so that they can fulfill its intended purpose, i.e. to provide the employee the opportunity to investigate a claim and possibly resolve it. For these reasons, foregoing service of an employee individually and only requiring service upon the government entity cannot stand.

ii. Claimants Already have Multiple Avenues Available to Serve Government Employees.

In looking at the complex legal and logistical issues that these proposed amendments will unquestionably create, it is important to keep in mind that a failure to properly or timely serve an employee with a notice of claim, does not bar a vicarious liability claim against the government employer from moving forward

(assuming the government entity was properly and timely served). *See Laurence v. Salt River Project Agric. Improvement & Power Dist.*, 255 Ariz. 95, 528 P.3d 139 (2023). Therefore, the Petition’s proposed amendments create legitimate problems in the effort of trying to resolve a non-issue.

Although certain government employees’ home addresses are protected by A.R.S. § 39-123, many are not and nothing prevents a claimant from serving a government employee while at work. Moreover, a claimant can request that the government entity seek authorization from its employee to accept service on his or her behalf. Claimants are also not prevented from filing an action to seek alternative service methods if other means are unavailable. Moreover, the legislature clearly dictated the methods by which a notice of claim could be served when it enacted A.R.S. § 12-821.01—in accordance with the rules of civil procedure. The proposed amendments are an effort to amend A.R.S. § 12-821.01 without the authority to do so and thus cannot be adopted.

iii. The Proposed Amendments Reach Beyond Service Requirements and Dictate Government Operations Outside of Litigation.

The proposed amendments require the administrative director of the Arizona Supreme Court to maintain an up-to-date directory of all public entities, public schools, and public employees. This task would be extraordinarily burdensome and could change by the minute as employees join or leave various government agencies. Arizona has 91 cities and towns. The State of Arizona alone, has approximately

34,000 employees in some 100 state agencies, boards and commissions according to the State Human Resources Division. The proposed amendments would require the administrative director to provide information for every government employee regarding service; this is not feasible. It would also be unduly burdensome for all government entities to publish a list on their own websites with up-to-date information on how a person may serve the entity and all of its employees as the proposed amendments would require.

Additionally, the proposed amendments require government entities to maintain a person to accept notices of claim during “Ordinary Business Hours.” The term “Ordinary Business Hours” is defined as “not less than Monday through Friday from 8:00AM to 5PM, except for Arizona Supreme Court holidays.” This, however, is problematic for entities that work a 4 day a week / 10 hours a day schedule and are closed on Fridays. This also creates issues for government entities that are closed on holidays that may not be recognized by the Arizona Supreme Court, but are recognized by the government entity, for example the United States Supreme Court and some government entities are closed on Juneteenth, some government entities have declared the day after Thanksgiving as a holiday, and others are only open for half a day on December 24th. This provision would require some entities to completely change their work schedules and the way they operate, which is well beyond the rule-making authority of the Court.

Moreover, the proposed amendments state that any failure of a public entity or public employee “to maintain a person to accept service during Ordinary Business Hours shall be construed as that public entity or public employee designating the attorney general as their agent for notice of claim service.” The attorney general would then have to have a system in place that would ensure that the intended recipients of the notice of claim are actually provided with the notice of claim with sufficient time for them to investigate and respond as A.R.S. § 12-821.01 contemplates. There is no guarantee this would happen.

Furthermore, the proposed amendments would be “construed liberally in favor of the notice of claim claimant and strictly against the public entity, public school, or public employee.” This directly contradicts A.R.S. § 12-821.01, which puts the burden of strict compliance on the claimant. *See Harris v. Cochise Health Sys.*, 215 Ariz. 344, 351, ¶ 25, 160 P.3d 223, 230 (App. 2007); *see also City of Mesa v. Ryan in & for Cnty. of Maricopa*, 557 P.3d 316, 319 (Ariz. 2024). Indeed, Arizona courts have determined that “[a]ctual 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, ¶ 10, 144 P.3d 1254, 1256 (2006). These proposed amendments would usurp decades of firmly established case law and should not be adopted.

Ultimately, these amendments are an attempt to change a statute enacted by the legislature (A.R.S. § 12-821.01), which governs how claims against government entities and employees must be made, prior to initiating a civil court proceeding. These proposed amendments, not only dictate service of a notice of claim (which occurs outside of and prior to any court proceeding), but require government entities to maintain directories, have certain information available on their websites (which must use a “gov” top-level domain, even though not all government entities currently host their websites on “gov” domains), and mandate that a government employee must be physically available to accept service even on a day the government office may be closed, which exceeds the scope of the Court’s “[p]ower to make rules relative to all procedural matters in any court.” Ariz. Const. art. VI, § 5.

III. Conclusion.

It is not difficult to comply with the service requirements of A.R.S. § 12-821.01—the proposed amendments would create endless issues for government entities, frustrate the fundamental rights of individual employees, and reach beyond the Court’s rule-making authority. For these reasons, the Court should deny the Petition to amend Rules 4.1, 4.2, and 5 and decline to adopt proposed Rule 4.3.

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RESPECTFULLY SUBMITTED this 30th day of April, 2026.

CITY OF GLENDALE

By: /s/ Ashley E. Wallace

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