

**LEAGUE OF ARIZONA CITIES AND TOWNS**

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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 the Supreme Court of Arizona, Nancy L. Davidson, General Counsel of the League of Arizona Cities and Towns (“League”), respectfully submits this Comment in opposition to the Petition that proposes to amend Arizona Rules of Civil Procedure 4.1, 4.2, and 5, and to add Rule 4.3 regarding the service of a notice of claim pursuant to A.R.S. § 12-821.01 (the “Petition”).

The League is a voluntary association of 91 incorporated cities and towns in Arizona, representing approximately 80 percent of Arizona’s total population. The League provides collective advocacy, education, training, technical assistance, and information-sharing for and amongst its member municipalities. The League also files comments regarding proposed rule changes with potential statewide impacts on its members.

The League opposes the Petition’s proposed rules. The proposed rules directly conflict with § 12-821.01 and would radically change how a notice of claim (“NOC”) is served upon League members and their employees. They are also unnecessary, unworkable, and contrary to the public interest.<sup>1</sup>

**I. The Proposed Rules Contravene § 12-821.01(A).**

While the Court is empowered to make rules relative to procedural court matters, the proposed rules go beyond procedure. *See* Ariz. Const. art. VI, § 5; A.R.S. § 12-109. They conflict with § 12-821.01(A) and impermissibly intrude upon the Legislature’s authority to define the conditions under which public entities and their employees may be sued.

The Arizona Constitution empowers the Legislature to restrict the right to sue public entities and employees, as well as prescribe the manner of maintaining such a suit. *See* Ariz. Const. art. 4, pt. 2, § 18 (stating the legislature may restrict an individual's right to sue the state and the manner in which the suit may be maintained); *see also Landry v. Superior Court In and For Pima County*, 125 Ariz. 337, 338 (Ct. App. Div. 2 1980) (same); *Stulce v. Salt River Project Agric. Improvement & Power Dist.*, 197 Ariz. 87, 93, ¶ 22 (App. 1999) (same). Consistent with this grant of authority, the Legislature adopted § 12-821.01 to require a person with a claim against a public entity or public employees to provide a written NOC to the “person or persons

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<sup>1</sup> The League incorporates by reference the City of Scottsdale’s comments.

authorized to accept service for the public entity or public employee as set forth in the Arizona rules of civil procedure . . .” A.R.S. § 12–821.01(A) (citation omitted).

***A. Service upon a public entity is not service upon its employees.***

The Petition provides that service of a NOC upon a government entity automatically constitutes proper service upon its employees. This means a public employee would no longer be entitled to *any* notice, defeating the entire purpose of § 12–821.01(A). *See, e.g., Backus v. State*, 220 Ariz. 101 (2009) (recognizing that the purpose of the notice of claim statutes is to allow the public entity to investigate and assess liability, to permit the possibility of settlement before litigation, and to assist the public entity in financial planning and budgeting); *Deer Valley Unified School Dist. No. 97 v. Houser*, 214 Ariz. 293 (2007) (same); *Falcon ex rel. Sandoval v. Maricopa County*, 213 Ariz. 525 (2006) (same); *Vasquez v. State*, 220 Ariz. 304 (Ct. App. Div. 2 2008) (same).

The statute entitles *both* public entities and their employees to notice of claims against them. A.R.S. § 12–821.01(A) (making a clear distinction between a public entity and a public employee for the purpose of the notice of claim); *see also, e.g., Johnson v. Superior Ct. In & For Cnty. of Pima*, 158 Ariz. 507, 509 (Ct. App. 1988) (holding that separate service on individual police officers was required); *Crick v. City of Globe*, 606 F. Supp. 3d 912 (D. Ariz. 2022) (holding that § 12-821.01(A) requires 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 to give notice of

the claim to *both* the employee individually and to his employer); *Crum v. Superior Court In and For County of Maricopa*, 186 Ariz. 351 (Ct. App. Div. 1 1996) (holding that a claimant who files suit against a public entity and a public employee must give notice of the claim to *both*); *DeBinder v. Albertson's, Inc.*, No. 06-1804, 2008 WL 828789, at \*3 (D. Ariz. Mar. 26, 2008) (holding that the statute “requires that service be made on public employees, in addition to the entities that employ them, as a prerequisite to any lawsuit against such employees”).

Strict compliance with § 12–821.01(A) is required. *Falcon ex rel. Sandoval v. Maricopa Cnty.*, 213 Ariz. 525, 527 (2006); *see also Yahweh v. City of Phoenix*, 243 Ariz. 21 (Ct. App. Div. 1 2017) (holding that a former city employee’s claims were barred because his notice of claim did not present a valid, sum-certain settlement offer). Thus, an employee’s actual notice of a claim does not suffice. *Falcon*, 213 Ariz. at 527. In *Harris v. Cochise Health Systems*, the intended individual defendant had received the notice of claim as a statutory agent for the public entity; however, the intended individual defendant was not named in the notice of claim. 215 Ariz. 344 (Ariz. Ct. App. 2007). The Arizona Court of Appeals concluded that the state claims against the individual defendant must be dismissed because the claimant failed to give separate notice to the individual defendant, even though the individual defendant had “actual” notice of the claim. *Id.* 351–52.

***B. Any rule that risks non-receipt of the NOC conflicts with § 12-821.01(A).***

The Petition provides that service of a NOC is effectuated once it is *sent* by email, regardless of whether the email reaches any recipient. Such a rule conflicts with § 12–821.01(A), which specifically links notice to *personal* service. *See* A.R.S. § 12–821.01(A) (referring to the “*person or persons* authorized to accept service”). Unlike personal service, sending an email provides no assurance that *anyone* receives notice. The only assurance is that the message was transmitted into a system that may or may not deliver it.

Even when service by email is allowed by a court, the email must still be “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.” *Dixon v. Picopa Const. Co.*, 160 Ariz. 251, 261 (1989); *see also Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Here, many factors increase the risk that an email will never reach the intended recipient. Government email systems are not ordinary personal inboxes; they are heavily filtered, secured, and managed environments. Email messages may be diverted to spam filters or blocked by firewalls. Emails with large attachments or from unknown senders (such as process server companies or law firms) are particularly likely to be flagged as suspicious, quarantined, or deleted before reaching the employee. Government email systems are also subject to automated deletion policies. Moreover, the intended recipient may be on leave, no longer use the email account, or no longer employed at the city. Some public employees are never assigned a city or town email address because of the nature

of their work. In addition, it is not uncommon in Arizona for a city or town email address to be assigned to a *job title or position*, as opposed to a specific employee (e.g., clerk@city.gov, codenforcement@city.gov, mayor@city.gov).

In the end, any rule that risks non-receipt of the NOC by the public entity defeats the entire purpose of a *notice* of claim.

***C. The Attorney General is not an agent of any municipality or its employees.***

The proposed rules improperly designate the Attorney General to accept service of a NOC on behalf of a municipality and its employees whenever a long list of website and staffing requirements are not met. The Attorney General is a legal representative for the *state*. Nothing in the Arizona Constitution or state law authorizes the Attorney General to accept service on behalf of any municipality or its employees—and the Attorney General has no power to allow or disallow any claim on behalf of a municipality or any municipal employee. *See generally* Ariz. Const. art. 5, § 9 (“The powers and duties of . . . [the] attorney-general . . . shall be as prescribed by law.”); *Shute v. Frohmiller*, 53 Ariz. 483, 488 (1939) (observing that the Attorney General has no common law powers and that the term “prescribed by law” in article 5, section 9, refers to statutes), overruled in part on other grounds by *Hudson v. Kelly*, 76 Ariz. 255 (1953).

**II. The Proposed Rules Are Unworkable.**

The Petition mandates that cities and towns employ a person to accept service from 8 a.m. to 5 p.m., Monday through Friday, excluding certain holidays. The

Petition also requires municipalities to conspicuously publish, on a website with a “gov” top-level domain, a dedicated email address, mailing address, *and* physical address for *each* public employee. The website must be up-to-date, easily found by common search engines, easily searchable, and accessible by all common web browsers. These are unfunded and burdensome mandates that go well beyond the proper scope of a procedural rule.

The mandates also fail to account for the operational differences amongst Arizona’s diverse municipalities. While some municipalities like Phoenix have thousands of employees, some municipalities have less than 10.<sup>2</sup> Fifty-two municipalities have business days and hours that do not align with the proposed business hours.<sup>3</sup> At least one municipality does not have a website, and nine municipal websites do not have a “gov” top-level domain.<sup>4</sup>

In addition, municipalities cannot be forced to violate state law or the privacy interests of its employees. The proposed rules require municipalities to publicly disclose the home addresses of public employees in violation of state law. *See* A.R.S. § 39-123 (making confidential the home addresses of certain election officers, elected officials, peace officers, law enforcement support staff, judges, commissioners,

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<sup>2</sup> For example, the Town of Duncan has approximately 8 employees. The City of Phoenix has over 14,000 employees throughout 41 different departments.

<sup>3</sup> Forty-three municipalities have four-day workweeks and nine have business hours that differ from 8:00 a.m. to 5:00 p.m. The list of cities and towns with operating hours that do not align with the Petition’s business hours is attached. *See* Exhibit I.

<sup>4</sup> The list of cities and towns without a “.gov” top-level domain is also included in Exhibit I.

hearing officers, prosecutors, code enforcement officers, and employees who are victims of domestic violence or stalking or otherwise protected under an order of protection or injunction against harassment). The Legislature specifically extended confidentiality protection to certain public employees based on legitimate interests in personal safety—a protection that cannot be stripped by a procedural court rule out of convenience.

### **III. Conclusion.**

In sum, the League opposes the Petition’s proposal to amend Arizona Rules of Civil Procedure 4.1, 4.2, and 5, and to add Rule 4.3 regarding the service of a notice of claim pursuant to § 12-821.01.

RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of May 2026.

/s/ Nancy L. Davidson  
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# **Exhibit I**

**TABLE I: List of Arizona Municipalities Operating on a Four-Day Work Week Schedule (as of May 1, 2026)**

#	Municipality	Business Days Open	Business Hours
1	Apache Junction	Monday through Thursday	7:00am to 6:00pm
2	Avondale	Monday through Thursday	7:00am to 6:00pm
3	Camp Verde	Monday through Thursday	7:00am to 6:00pm
4	Cave Creek	Monday through Thursday	7:00am to 5:00pm
5	Chino Valley	Monday through Thursday	7:00am to 5:00pm
6	Clarkdale	Monday through Thursday	8:00am to 5:30pm
7	Clifton	Monday through Thursday	7:00am to 5:00pm
8	Colorado City	Monday through Thursday	8:00am to 5:00pm
9	Dewey-Humboldt	Monday through Thursday	8:00am to 6:00pm
10	Duncan	Monday through Thursday	8:00am to 5:30pm
11	Eagar	Monday through Thursday	7:00am to 5:30pm
12	Fountain Hills	Monday through Thursday	7:00am to 6:00pm
13	Fredonia	Monday through Thursday	7:30am to 5:30pm
14	Gilbert	Monday through Thursday	7:00am to 6:00pm
15	Hayden	Monday through Thursday	7:00am to 5:30pm
16	Holbrook	Monday through Thursday	7:00am to 5:00pm
17	Huachuca City	Monday, Wednesday through Friday	8:00am to 5:00pm
18	Jerome	Monday through Thursday	8:00am to 5:00pm
19	Kearney	Monday through Thursday	7:00am to 5:30pm
20	Kingman	Monday through Thursday	7:00am to 6:00pm
21	Maricopa	Monday through Thursday	7:00am to 6:00pm
22	Mesa	Monday through Thursday	7:00am to 6:00pm
23	Page	Monday through Thursday	7:00am to 5:30pm
24	Parker	Monday through Thursday	7:00am to 6:00pm
25	Payson	Monday through Thursday	7:00am to 5:30pm
26	Peoria	Monday through Thursday	7:00am to 6:00pm
27	Pima	Monday through Thursday	8:00am to 4:00am
28	Quartzite	Monday through Thursday	7:00am to 6:00pm
29	Queen Creek	Monday through Thursday	7:00am to 6:00pm
30	Safford	Monday through Thursday	7:00am to 6:00pm
31	Sahuarita	Monday through Thursday	7:00am to 6:00pm
32	Sedona	Monday through Thursday	7:00am to 6:00pm
33	Snowflake	Monday through Thursday	7:30am to 5:00pm

34	Somerton	Monday through Thursday, closed every other Friday	Mon-Thu, 7:30am to 5:30pm; Fri, 7:30am to 4:30pm
35	Springerville	Monday through Thursday	7:00am to 5:30pm
36	St. Johns	Monday through Thursday	6:30am to 5:30pm

37	Taylor	Monday through Thursday	7:30am to 5:30pm
38	Thatcher	Monday through Thursday	7:00am to 6:00pm
39	Tolleson	Monday through Thursday	7:30am to 5:30pm
40	Wellton	Monday through Thursday	6:30am to 5:00pm
41	Wickenburg	Monday through Thursday	7:00am to 6:00pm
42	Willcox	Monday through Thursday	7:00am to 5:30pm
43	Yuma	Monday through Thursday, closed every other Friday	7:00am to 5:00pm

**Source:** Data collected from the *League of Arizona Cities and Towns 2026 Local Government Directory*.

**TABLE II: List of Arizona Municipalities Whose Ordinary Business Hours Fall Outside 8:00am to 5:00pm (as of May 1, 2026)**

#	Arizona Municipality	Business Days Open	Business Hours
1	Carefree	Monday through Friday	8:00am to 4:30pm
2	Gila Bend	Monday through Friday	8:00am to 4:00pm
3	Mammoth	Monday through Friday	8:00am to 4:00pm
4	Paradise Valley	Monday through Friday	7:00am to 4:00pm
5	Patagonia	Monday through Friday	7:30am to 3:00pm
6	Williams	Monday through Friday	9:00am to 5:00pm
7	Winkelman	Monday through Friday	9:00am to 5:00pm
8	Winslow	Monday through Friday	7:30am to 4:00pm
9	Youngtown	Monday through Friday	8:00am to 4:00pm

**Source:** Data collected from the *League of Arizona Cities and Towns 2026 Local Government Directory*.

**TABLE III: Arizona Municipalities with a Website Without a "Gov" Top-Level Domain**

#	Arizona Municipality
1	Chino Valley
2	Clifton
3	Coolidge
4	Guadalupe
5	Parker
6	Quartzsite
7	Safford
8	San Tan Valley
9	St. Johns
10	Star Valley

**Source:** Data collected from the League of Arizona Cities and Towns 2026 Local Government Directory.

\*While having a "gov" top-level domain, San Tan Valley does not yet have a website and instead the URL redirects to the League of Arizona Cities and Towns Website.