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Agricultural Improvement and Power District

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

Supreme Court No. R-25-0048

PETITION TO AMEND
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 ADD RULE 4.3
REGARDING SERVICE OF
PROCESS OF NOTICE OF CLAIM
UPON GOVERNMENT OFFICIALS**

Pursuant to Rule 28(D), Rules of the Supreme Court, Salt River Project Agricultural Improvement and Power District respectfully submits this Comment for the Court’s consideration.

I. INTRODUCTION

Salt River Project Agricultural Improvement and Power District (“SRP”), an agricultural improvement district under Title 48, Chapter 17, A.R.S., and a political subdivision of the State of Arizona, *see* A.R.S. § 48-2302, respectfully submits these comments in opposition to the Petition to Amend Court Rules Regarding Service of Process of Notice of Claim Upon Government Officials (the “Petition”).

As explained herein, the Petition proposes amendments that conflict with the

legislature's exclusive authority over the procedure for pursuing claims against public entities and public employees, discards the statute's strict compliance requirement, and would generate more administrative costs and litigation than currently exists. Any one of these is an adequate and compelling ground for denying the Petition.

II. THE LEGISLATURE CONTROLS THE MEANS AND METHODS FOR BRINGING SUIT AGAINST THE PUBLIC ENTITIES AND PUBLIC EMPLOYEES

The Arizona Constitution vests in the legislature exclusive authority to determine the requirements for bringing a claim against the State, its political subdivisions, and their employees. *See* Ariz. Const. art. IV, Pt. 2 § 18 (“The legislature shall direct by law in what manner and in what courts suits may be brought against the state.”); *State v. Barnum*, 58 Ariz. 221, 231 (1941) (holding the State is immune from suit “except upon its own terms and conditions”).

In A.R.S. § 12-821.01, the legislature established the specific requirements that must be satisfied before bringing a claim against a public entity or public employee. *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, 295, ¶ 19 (2007). Specifically, a notice of claim containing the facts that establish the basis for liability and an amount for which the claim can be settled must be filed “with the person or person 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.” *Id.* at ¶ 22.

Section 12-821.01 is designed to allow the public entity and public employee an opportunity “to investigate and assess liability, to permit the possibility of settlement prior to litigation, and to assist the public entity in financial planning and budgeting.” *Id.* at ¶ 6. As such, “[c]ompliance with the notice provision of § 12-821.01 is a mandatory and essential prerequisite” to bringing an action subject to the notice of claim requirement. *Harris v. Cochise Health Sys.*, 215 Ariz. 344, 351 (App. 2007) (internal quotations

omitted). Although “excusable neglect” was once an exception to the notice of claim requirement, *see* A.R.S. § 12-821(A) (1992), the legislature has amended the statute “in favor of language that requires strict compliance with the statutory filing prerequisites.” *Lee v. State*, 218 Ariz. 235, 245 (2008) (McGregor, C.J., dissenting). Thus, under the current statute, neither “actual notice” nor “substantial compliance” are sufficient. *Falcon ex rel. Sandoval v. Maricopa Cnty.*, 213 Ariz. 525, 527, ¶ 10 (2006).

The plain language in Section 12-821.01 adopting a strict-compliance framework matters here because the Petition does not seek mere clarification on a matter of procedure—it seeks to override substantive legislative choices about the acceptable means and methods for bringing claims against public entities and public employees. For example, the Petition would alter who may be served, what constitutes valid service, and when service is deemed complete under A.R.S. § 12-821.01. By asking this Court to use its rulemaking authority in a manner that would substantially alter Arizona’s statutory notice-of-claim framework for claims against public entities and public employees, the Petition would have this Court exceed its rulemaking authority and violate the Arizona Constitution’s distribution of powers. *See J.V. v. Blair in & for Cnty. of Maricopa*, 256 Ariz. 247, 250 ¶ 14 (App. 2023). Such proposed changes constitute improper substantive changes to a statutory regime, not mere procedural rulemaking.

The Petition’s reliance on perceived practical difficulties does not change the analysis. Even if *Simon v. Maricopa Medical Center*, 225 Ariz. 55 (App. 2010), and *Batty v. Glendale Union High School District No. 205*, 221 Ariz. 592 (App. 2009) reflect that service questions can sometimes be exacting, that only shows the statute and existing rules require precision; it does not authorize the Court to relax statutory prerequisites through rulemaking. Those decisions do not demonstrate the need for the proposed rule changes. They show only that existing law requires compliance with the statutory scheme the Legislature enacted.

The Petition’s proposed rule changes are also improper because they would collapse

the statutory distinction between service on a public entity and service on a public employee. The statute requires service on the proper person authorized to accept service for the public entity or public employee, and Arizona’s strict-compliance framework does not permit the Court to deem service on one as service on the other absent legislative authorization. *See Johnson v. Superior Ct. In & For Cnty. of Pima*, 158 Ariz. 507, 509, (App. 1988) (holding “§ 12–821(A) unambiguously provides that both public entities and their employees are entitled to notice of claims against them”). Treating entity service as employee service by rule would therefore create a substantive shortcut the legislature did not adopt. It would also ignore that a public entity and a public employee are legally distinct parties who may face different theories and scopes of liability. Deeming notice to one as sufficient notice to the other would disregard each party’s independent right to notice of the claim asserted against it and the separate right to investigate, assess exposure, and respond accordingly.

This is particularly evident in proposed Rule 4.3(d)(2) and (e)(3), which would automatically designate the Attorney General as agent for service based solely on a public entity’s failure to satisfy website or directory requirements. *See* Petition Ex. A at 9-10. In addition to the aforementioned notice issues, designating the Attorney General as the default agent for service also raises serious conflict of interest concerns in matters where the State’s interests are adverse to those of the public entity and/or employee for whom service is purportedly accepted. The legislature has not authorized such an automatic agency designation, and creating one through a court rule—with the effect of binding public entities to service they may have no practical means to contest—goes far beyond procedural housekeeping and into the realm of substantive alteration of the statute’s service requirements.

The same is true of proposed Rule 4.3(h), under which an email would be deemed received regardless of actual delivery or technical failure. *Id.* at 12. A public entity that never received the email cannot investigate the claim, assess liability, or consider

settlement—which is precisely what § 12-821.01 exists to enable. Deeming service complete regardless of actual receipt does not satisfy the statute; it defeats it.

In short, the notice-of-claim requirements serve the legislature’s chosen objectives—allowing public entities to “investigate the claim, assess liability, consider settlement before litigation, and budget for possible future litigation”—strict compliance is not incidental to § 12-821.01(A), but necessary “[t]o further these goals.” *City of Mesa v. Ryan*, 557 P.3d 316, 319 ¶ 9 (Ariz. 2024). Accordingly, the proper and exclusive method for Petitioner’s desired relief is lobbying the legislature, not petitioning this Court to exercise its Court’s rulemaking authority to override legislative determinations about the means and methods for pursuing claims against public entities and public employees.

III. THE PETITION IS ADMINISTRATIVELY UNWORKABLE

The proposed rule would impose broad and impractical obligations on public entities and the judicial branch. It would require public entities and public employees to maintain detailed website disclosures, comply with vague standards such as being “easily searchable,” and continuously update service-related information. *See* Ex. A at 9. It would also require the Administrative Director of the Arizona Supreme Court to create and maintain a comprehensive statewide directory of public entities, schools, and employees. *Id.*

These requirements lack any funding mechanism, are infeasible for large governmental organizations, and would inevitably generate disputes over technical compliance. Rather than creating clarity, the rule would introduce uncertainty and invite collateral litigation over whether its requirements were satisfied.

The proposed framework also invites gamesmanship by allowing claimants to rely on alleged deficiencies in publicly available information to circumvent traditional service requirements and effect service through alternative means. Such a system would increase, not reduce, disputes over service and compliance.

These practical defects underscore the more fundamental problem: the Petition is

not asking this Court to manage procedure more efficiently within the existing statutory framework. It is asking the Court to replace that framework with a new regulatory regime of directories, website disclosures, deemed agents, and deemed receipt. If such a regime is to exist, it must come from the legislature, which can weigh policy tradeoffs, funding, feasibility, and statewide consequences.

IV. THE PETITION UNDERMINES IMPORTANT PUBLIC POLICY INTERESTS

The Petition's access-to-justice framing does not withstand scrutiny. The notice-of-claim statute exists to give public entities a meaningful opportunity to investigate claims, assess liability, and budget for litigation before suit is filed. *Deer Valley*, 214 Ariz. at 295, ¶ 6; *Martineau v. Maricopa County*, 207 Ariz. 332, 335, ¶ 19 (App. 2004). The Petition's proposed service mechanisms—including deemed receipt of undelivered emails and automatic agency designations—strip public entities of that opportunity entirely.

By permitting service without actual notice, the Petition would deny public entities the opportunity to investigate and settle claims before litigation—which is the statute's entire purpose. The result would be more litigation, not less, and greater exposure of public funds, not reduced barriers for claimants.

Even if the Petitioner believes the current statutory framework is too burdensome, that policy argument belongs to the Legislature. The Legislature is the branch empowered to decide whether the notice-of-claim statute should be relaxed, amended, or supplemented with alternative service provisions. This Court's rulemaking process is not a substitute for legislative revision, especially where the proposed changes would undercut the statute's purposes and replace strict compliance with legal fictions.

V. THE PETITION RAISES PUBLIC SAFETY AND PRIVACY CONCERNS

The Petition's directory requirement would compel law enforcement agencies and other sensitive public employers to publish centralized contact and service information for their personnel. For officers and employees in sensitive roles, this creates real and

foreseeable safety risks that the Petition does not address. A rule that generates harassment risks for public employees—while simultaneously failing to ensure actual notice of claims—cannot be said to serve the public interest.

VI. THE PETITION IS VAGUE AND INTERNALLY INCONSISTENT

The rule's internal contradictions are disqualifying on their own. It requires reliance on published service information while simultaneously disclaiming responsibility for its accuracy. *See* Ex. A at 10. It deems "best guess" information legally valid for service on the Attorney General. *Id.* at 11. And it conditions legal consequences on ambiguous and undefined standards like “conspicuously publish” and “easily searchable.” *Id.* at 8–9. A procedural rule that is internally inconsistent, that imposes legal consequences based on undefined standards, and that simultaneously requires and disclaims reliance on the same information is not a workable rule. It would only serve to invite disputes and generate litigation.

Those defects further confirm that the Petition is not a modest procedural clarification. It is an attempt to replace a statutory framework with an indeterminate and self-contradictory regime that would generate threshold disputes over compliance, service, and validity. Rather than simplifying the notice-of-claim process, the proposed rule would create new layers of uncertainty for claimants, public entities, public employees, and the courts alike.

VII. CONCLUSION

The Petition asks this Court to override the legislature's filing requirements for claims being brought against public entities and public employees by replacing the strict compliance requirement with administrative fictions, and establish an unfunded statewide directory. None of that is within this Court's authority, and none of it is a proper use of the rulemaking process. If the Petitioner seeks to accomplish substantive changes to the requirements of A.R.S. § 12-821.01, he must ask the legislature to do so. He may not obtain through rulemaking what Arizona's Constitution reserves to the legislative process.

SRP respectfully requests that the Petition be denied.

RESPECTFULLY SUBMITTED this 1st day of May, 2026.

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