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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:	)	Supreme Court No.
	)	R-25-0048
PETITION TO AMEND COURT RULES	)	
REGARDING SERVICE OF PROCESS	)	Comment in Opposition
OF NOTICE OF CLAIM UPON	)	
GOVERNMENT OFFICIALS	)	
	)	

Pursuant to Rule 28(c), Rules of the Supreme Court of Arizona and this Court's order dated January 22, 2026, David K. Byers ("Commentor") hereby submits this Comment opposing Rule Petition No. R-25-0048 ("Petition") filed by Mr. Eli Dalton-Webb ("Petitioner"). The Petition proposes amending Civil Rules 4.1, 4.2, and 5, and adopting a new Civil Rule 4.3 regarding service of a notice of claim on government officials.

I. Discussion

The Petition proposes amending Civil Rules 4.1, 4.2, and 5, and adopting a new Civil Rule 4.3 to govern service of notices of claim on government officials. As discussed below, the proposal raises constitutional concerns and would impose cumbersome, costly, time consuming, and ultimately unworkable requirements.

A. The Petition Raises Constitutional Concerns

a. Rule Making Authority

The Supreme Court's rulemaking authority extends to rulemaking for judicial proceedings within Arizona's integrated judicial system. Ariz. Const. art. VI § 5. A notice of claim is not a judicial filing, nor is it a pleading through which a judicial proceeding can be commenced in a court. It is a pre-litigation filing that occurs entirely outside the court, before a civil case is commenced in a court. As the Court of Appeals has explained, "[a] notice of claim that satisfies A.R.S. § 12–821.01 is a necessary *prerequisite to filing a lawsuit* against a public entity." *Donovan v. Yavapai County Community College District*, 244 Ariz. 608, 610 (App. 2018) (emphasis added). The purpose of A.R.S. § 12–821.01 is "to provide the entity an opportunity to investigate the claim, to assess its potential liability, to reach a settlement *before litigation*, and to budget and plan." *Id* (emphasis added). The Petition asks this Court to extend its rule making authority beyond constitutional limits to filings made completely outside of the judiciary, effectively legislating in this area.

b. Due Process Concerns

Proposed Rule 4.3(c) and (f), provide that service upon a government entity is also service upon its employees. This provision would mean that every employee of the government entity, regardless of whether they were named in the claim or knew of the claim, would be considered served. A public employee whom a claimant is seeking to

hold personally liable is constitutionally entitled to actual notice. Proposed Rule 4.3(c) and (f) do not pass constitutional muster.

B. A.R.S. § 12-821.01 Prescribes How a Notice of Claim Must be "Filed," Not "Served"

The Petition appears to misread A.R.S. § 12-821.01(A), posturing the proposed rule amendments on the notion that notices of claim are "served" under A.R.S. § 12-821.01. (Petition at page 1, "Serving a Notice of Claim upon government officials is an absolute mess, with the current rules in place.") *See also* proposed Rule 4.3(a), "This rule governs the service of notices of claims within the meaning of A.R.S. § 12-821.01." But A.R.S. § 12-821.01(A) prescribes the procedures for *filing* a notice of claim—not *serving* a notice of claim and these terms are not interchangeable. Such an interpretation rewrites the statute by substituting "serve" for "file," contrary to the plain language of A.R.S. § 12-821.01.

Statutory context confirms this reading: A.R.S. § 12-821.01(D), "Notwithstanding subsection A, a minor or an insane or incompetent person may ***file*** a claim within one hundred eighty days after the disability ceases" and A.R.S. § 12-821.01(E), "A claim against a public entity or public employee ***filed*** *pursuant to this section* is deemed denied sixty days after ***the filing*** of the claim . . ." (emphasis added).

By the plain text of A.R.S. § 12-821.01(A), the reference to the Arizona Rules of Civil Procedure in A.R.S. § 12-821.01(A) operates no further than to prescribe the person with whom a notice of claim must be *filed:* "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." A.R.S. § 12-821.01(A), in fact, does not prescribe *any* method by which a notice of claim may be *served.*

Where the legislature intends to invoke the Rules of Civil Procedure for purposes of service, it does so explicitly. *See*, for example, A.R.S. § 42-16209(A) relating to property tax appeals, "A copy of the notice of appeal shall be *served* . . . in the manner provided for service of process in the rules of civil procedure . . . " (emphasis added). If the legislature intended to invoke the Rules of Civil Procedure for *service* of a notice of claim under A.R.S. § 12-821.01, it would have done so explicitly.

C. Proposed Rule 4.3(d) Goes Beyond Court Procedure

Proposed Rule 4.3(d) likewise goes beyond court procedure and effectively seeks to legislate by imposing requirements wholly unrelated to court procedure or judicial proceedings on all public entities, public schools, and public employees by requiring them to publish on their websites how a person may serve a notice of claim on the public entity, public school, and their employees. As a preliminary matter, the drafting of this rule is problematic because it would require *public employees* to post on *their* website "how a person may serve a notice of claim upon the public entity, public school, and all their public employees." ("[P]ublic employees shall conspicuously, clearly, and unambiguously publish on the their website . . . information on how a person may serve

a notice of claim upon the public entity, public school, and all their public employees."). It is unclear what ".gov" website a *public employee* would have that would fall within the purview of this rule.

In addition to the problematic language drafting, this proposed rule raises a host of other concerns, which other comments filed on this Petition have pointed out. Of significant concern is the publication of the address of public employees. The Petition states, "The only reason why any litigant has any reason to find out where a public employee lives is because of the unforgiving nature of Civil Procedure Rule 4.1(d)." Petition at page 3. But this is wholly untrue. There has been increased violence and threats of violence against judges and other court personnel, and these events underscore why protection, not publication, of their addresses is of utmost importance.

The proposal also presents logistical and practical problems by imposing financial and administrative burdens on government entities to ensure that information on public websites is continuously provided and updated. Regardless, the provisions proposed by Rule 4.3(d) are requirements that only the legislature can impose, and this Court should decline to adopt them.

D. Proposed Rule 4.3(e) is Unworkable

The Petition also proposes Rule 4.3(e), providing "The administrative director [sic] shall maintain an up-to-date directory of all public entities, public schools, and public employees, and pertinent information related to serving them with notices of claims that is easily searchable by laymen with basic computer literacy." Not only does

this fall outside the role of the judiciary, such a directory would first have to be developed and then continually maintained with information on *every* public entity, public school, or public employee. Such a directory, for any branch of government, would not only be impossible to maintain, but it would be extraordinarily costly, time consuming, and cumbersome.

II. Conclusion

For the reasons stated above, Commentor opposes the Petition and respectfully requests that this Court deny it.

Respectfully submitted this 1st day of May, 2026.

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