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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-25-0048

10 **PETITION TO AMEND COURT**
11 **RULES REGARDING SERVICE**
12 **OF PROCESS OF NOTICE OF**
13 **CLAIM UPON GOVERNMENT**
14 **OFFICIALS**

STATE BAR OF ARIZONA
COMMENT

14 Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, the State Bar
15 of Arizona (“the State Bar”) submits this Comment in opposition to the Petition to
16 Amend Arizona Rules of Civil Procedure 4.1, 4.2 and 5, and to add Rule 4.3
17 regarding filing notices of claim with the “person or persons authorized to accept
18 service” pursuant to A.R.S. § 12-821.01(A). While the Petition raises some
19 legitimate concerns, it does not squarely frame the issues; the proposed amendments
20 do not balance the interests of due process on the one hand, and access to justice on
21 the other; would likely require legislative action; and are impracticable. The State
22 Bar recommends that the Supreme Court of Arizona create a Task Force with key
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1 stakeholders to explore the various issues, idiosyncrasies, and potential solutions
2 related to filing notices of claim pursuant to A.R.S. § 12-820.01 and Rule 4.1,
3 particularly regarding filing a notice of claim on “any other governmental entity”
4 under Rule 4.1(h)(4).
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6 **I. THE REQUIREMENT TO FILE NOTICES OF CLAIM AGAINST**
7 **THE PERSON OR PERSONS AUTHORIZED TO ACCEPT SERVICE**
8 **OF PROCESS.**

9 The notice of claim statute, A.R.S. § 12-821.01, provides in pertinent part:

10 Persons who have claims against a public entity, public school or a
11 public employee shall file claims with the person or persons authorized
12 to accept service for the public entity, public school or public employee
13 as set forth in the Arizona rules of civil procedure within one hundred
14 eighty days after the cause of action accrues.... Any action that is not
15 filed within one hundred eighty days after the cause of action accrues
16 is barred and no action may be maintained thereon.

17 The Petition consistently refers to “service” of a notice of claim, however, a
18 notice of claim is not “served” but rather is “filed.” *Lee v. State*, 218 Ariz. 235, 237
19 ¶ 7 (2008) (notice of claim does not require a process server but may be mailed by
20 regular U.S. mail to a governmental entity). While Arizona Court of Appeals
21 memorandum decisions have applied *Lee* to individuals (*Iknadosian v. Mahon*, 1
22 CA-CV 13-0205, 2014 WL 2548975, at *2, ¶ 9 (App. June 5, 2014); *Schaer v.*
23 *Mooney*, 1 CA-CV 10-0770, 2011 WL 2365114, at *3, ¶ 10 (App. June 9, 2011)),
24 not all federal courts have applied *Lee* to individual public employees when deciding
25 notice of claim issues on state law claims over which they have supplemental

1 jurisdiction. *See Stevens v. Arizona*, CV-23-00770-PHX-SMB, 2024 WL 418132, at
2 *6 (D. Ariz. Feb. 5, 2024) (employee must be served personally as required by
3 Arizona Rules of Civil Procedure). Therefore, while there may be some confusion
4 regarding what constitutes “filing” of a notice of claim (which is best left to the
5 legislature and/or courts to determine), the statute is clear that a notice of claim must
6 be delivered to or “filed” with the “person or persons authorized to accept” service
7 under Ariz. R. Civ. P. 4.1(h).
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10 The purpose of the notice of claim statute is to give notice to the governmental
11 entities and public employees to allow them to “investigate and assess liability,
12 permit the possibility of settlement, and assist the public entity in financial planning
13 and budgeting.” *Jones v. Cochise County*, 218 Ariz. 372, 377, ¶ 15 (App. 2008).
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15 Strict compliance with the notice of claim statute within a relatively short time
16 of 180 days after the cause of action accrues, with limited statutory exceptions,
17 creates a barrier to some claimants with legitimate claims, depriving them of a
18 remedy. There is no way to seek alternative means of filing or more time to file, and
19 there is no way to seek any kind of relief in law or in equity once the deadline has
20 passed.
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22 Therefore, the goal of any rule change should balance the interests of public
23 entities and employees to receive notice against the ability of claimants to seek relief
24 in court. Litigants, governmental entities, and public employees will benefit from
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1 clearer rules pertaining to the identification of whom notices of claim should be
2 delivered to in order to meet the requirements of A.R.S. § 12-821.01 and Rule 4.1.

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4 **II. ISSUES WITH FILING NOTICES OF CLAIMS AGAINST
5 GOVERNMENTAL ENTITIES NOT DELINEATED IN RULE 4.1(h).**

6 As the Petition recognizes, citing *Batty v. Glendale Union High School Dist.*,
7 221 Ariz. 592 (App. 2009), it is often difficult to identify “the person or persons
8 authorized to accept service” who must receive a notice of claim when dealing with
9 claims against public school districts.

10 While Ariz. R. Civ. P. 4.1(h) was amended in 2013 to clarify how to serve
11 certain governmental entities, identifying the “person or persons authorized to accept
12 service” for the State, County and Municipal Corporations, it did not specifically
13 address service upon public school districts or other governmental entities. Instead,
14 Rule 4.1(h)(4) provides a catchall provision for “any other governmental entity,”
15 which would include public school districts. The rule provides that service upon all
16 other governmental entities is effectuated through “(A) the individual designated by
17 the entity, as required by statute, to receive service of process; or (B) if the entity
18 has not designated a person to receive service of process, then the entity’s chief
19 executive officer(s), or alternatively, its official secretary, clerk or recording
20 officer.” Ariz. R. Civ. P. 4.1(h) The catchall provision is similar to the pre-2013
21 Ariz. R. Civ. P. 4.1(i).
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1 Rule 4.1(h)(4), however, seems in conflict with case law on the matter.
2 Specifically, the Arizona Supreme Court in *Falcon ex rel. Sandoval v. Maricopa*
3 *County*, 213 Ariz. 525, 527 ¶ 14 (2006) recognized that some public entities, such
4 as school boards, did not have statutorily designated CEOs, and defined the term
5 “executive officer” as the “individual or entity that controls, supervises and has the
6 ultimate responsibility for ensuring the property function of a governmental entity.”
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8 *Id.* The Court reviewed the statutory powers and duties of the county board of
9 supervisors and held that the board of supervisors was the county’s CEO for
10 purposes of Rule 4.1(h), and that delivery of a notice of claim to only one board
11 member did not comply with the notice of claim statute or service rule. *Id.* at 531, ¶
12 34. The *Batty* court, in reliance on *Falcon*, held that while a school governing board
13 could delegate its authority to accept effective service of process to a CEO, that did
14 not occur for the defendant school district (and potentially could never occur because
15 the board cannot give away its ultimate authority), so that delivery to or filing of a
16 notice of claim with the school superintendent was insufficient and did not constitute
17 proper filing of a notice of claim. *Batty*, 221 Ariz. at 596, ¶ 14.
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21 Therefore, applying Rule 4.1(h) to the filing of notices of claims against
22 school districts and other governmental entities in light of *Falcon* and *Batty* may
23 lead to confusion and errors regarding identification of the “person or persons
24 authorized to accept service,” that is, the persons or persons to whom filing of the
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1 notice of claim must be directed. A.R.S. § 12-821.01. While Rule 4.1(h)(4)(A) states
2 that service (or as applied to notices of claims, “filing”) may be effectuated on an
3 “individual designated by the entity. . . to receive service of process,” *Falcon* and
4 *Batty* suggest that such designation may be ineffective because those individuals do
5 not have “the ultimate responsibility for ensuring the proper function of a
6 governmental entity.” *Falcon*, 213 Ariz. at 527, ¶ 14; *Batty*, 221 Ariz. at 596, ¶¶14-
7 8 15, fn. 2.

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10 Likewise, Rule 4.1(h)(4)(B) authorizes service (or as applied to notices of
11 claims, “filing”) upon the entity’s chief executive officer(s), or alternatively, its
12 official secretary, clerk or recording officer. However, *Falcon* and *Batty* establish
13 that “chief executive officer” means a person or persons who has “the ultimate
14 responsibility for ensuring the proper function of a governmental entity.” *Id.*
15 Employees with the title “chief” or part of the “executive” team of a school district
16 or other governmental entities may not meet this requirement, so that filing a notice
17 of claim upon them would be ineffective. The plain language of the rule in light of
18 the case law would likely lead to delivery of the notice of claim to the wrong person
19 or persons, which would completely bar a claim.

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22 Indeed, such confusion could abound with other governmental entities not
23 specifically identified in Rule 4.1(h), and presumably the holdings in *Falcon* and
24 *Batty* would apply. Ultimately, a claimant would have to determine who has “the
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1 ultimate responsibility for ensuring the proper function of [the] governmental
2 entity,” and delivering a notice of claim to an individual designated to receive service
3 of process or to chief executive officer(s) as ostensibly allowed in Rule 4.1(h)(4)
4 may not satisfy the notice of claim statute. Claimants seeking to comply with the
5 statute do not have the ability to conduct discovery on this issue given that the statute
6 is a prerequisite to filing suit. This, in turn, could block access to justice for many
7 claimants.
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10 While this confusion is not limited to filing of notices of claims and may also
11 cause issues with service of process, the difference is that in a lawsuit, waivers or
12 acceptance of service are encouraged and there are various rules that allow litigants
13 to seek leave and relief from the court to extend the time for service and, to seek
14 alternative means of service, or other relief in law or equity. With notices of claim,
15 there is no means to seek such relief, and the time to file the claim is only 180 days;
16 otherwise, the claim is barred.
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18 **III. ISSUES WITH FILING A NOTICE OF CLAIM AGAINST** 19 **INDIVIDUAL PUBLIC EMPLOYEES.**

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21 The Petition also raises challenges with filing notices of claims against public
22 employees individually. As the Petition points out, the personal residences of public
23 employees are often redacted and protected, making it difficult to locate and
24 individually deliver notices of claims to public employees. However, there is a
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1 strong public policy reason to protect the personal information and residences of
2 public employees. While the problem of locating and filing notices of claim with
3 individual public employees also extends to service of process of lawsuits, once
4 again the difference is that claimants have no recourse or ability to seek relief from
5 a court in filing the notice of claim, and strict compliance to the notice of claim
6 statute is required, otherwise the claim is barred.
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9 On the other hand, public employees, as individuals, have a right to delivery
10 of a notice of claim per the notice of claim statute. While the only consequence of
11 not responding to a notice of claim is that the claim is deemed denied after 60 days
12 (A.R.S. § 12-821.01(E)), the Legislature ostensibly believed individual public
13 employees should receive notice of the claim prior to the denial or filing of a lawsuit.
14 It would be unfair to deprive public employees of the right to direct receipt of a
15 notice of a claim brought against them and instead require reliance on the employer
16 to deliver notice.
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19 Practically speaking, in tort claims, failure to provide a public employee
20 acting in the course and scope of employment with a compliant notice of claim has
21 no effect on the claim against the employer. This Court held in *Laurence v. Salt*
22 *River Project*, 255 Ariz. 95, 97 ¶ 16 (2023) that dismissal of a claim against an
23 employee for reasons unrelated to a claim's merits does not foreclose a respondeat
24 superior claim against the employer. Thus, in *Laurence*, the dismissal of the claim
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1 against the employee due to the failure to file a timely notice of claim against him
2 did not bar the respondeat superior claim against the employer (who timely received
3 the notice of claim). *See also Banner Univ. Med. Ctr. Tucson Campus, LLC v.*
4 *Gordon*, 252 Ariz. 264 (2022) (vicarious liability claim survived against the hospital
5 despite dismissal of individual doctors for failure to file notice of claim). Thus, even
6 if the claim is barred against the public employee, a claimant can proceed to file
7 against the governmental entity for vicarious liability. Further, if a public employee
8 was not acting within the course and scope of employment, then a notice of claim is
9 not required. *See Crum v. Superior Court*, 186 Ariz. 351 (App. 1996). In addition,
10 no notices of claim are required if a claim is purely for declaratory or injunctive
11 relief. *See [State v. Mabery Ranch, Co.](#), 216 Ariz. 233, 244–45, ¶¶ 47–53, 165 P.3d*
12 *[211, 222–23 \(App. 2007\)](#)*. Thus, given that dismissal of the employee does not
13 extinguish the respondeat superior claim against the employer, and that no notice is
14 required when the employee acted outside the course and scope of employment, the
15 claimants may still proceed on these types of claims.

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20 **IV. THE PROPOSED RULE CHANGES IN THE PETITION DO NOT**
21 **RESOLVE THE ISSUES AND ARE IMPRACTICAL.**

22 The Petition proposes a new Rule 4.3 applicable to “service” of notices of
23 claim only. The proposals are problematic for a variety of reasons and do not
24 necessarily resolve the issues.
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1 Proposed Rule 4.3(c) allowing for service or filing of a notice of claim on a
2 government entity to constitute service or filing on its employees ignores the
3 legislative requirement in A.R.S. § 12-821.01 that notice must be provided to
4 individual public employees and ignores the potential due process implications of
5 failing to provide actual notice to individuals.
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7 Proposed Rule 4.3(d) requiring public entities and public employees to self-
8 publish instructions on how to “serve” or “file” a notice of claim would likely require
9 legislation or mandate, which cannot be done through the Rules of Civil Procedure.
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11 Proposed Rule 4.3(e) requiring the administrative director of the Arizona
12 Supreme Court to maintain a directory will entail a significant amount of work to
13 keep up to date and again requires public entities to provide such information.
14 Designating the attorney general as the default individual who can accept service or
15 to whom the filing of a notice of claim may be directed would likely require a
16 legislative change to the statute. It would also put a huge burden on the Attorney
17 General’s Office to track and disseminate thousands of notices of claim to the
18 appropriate governmental entity.
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21 Therefore, while the Petition raises legitimate issues regarding filing notices
22 of claim, specifically the identification of the “person or persons authorized to accept
23 service” for governmental entities and difficulties in delivering notice of claims to
24 individual public employees, Petitioner’s proposals are not workable. Thus, the
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1 State Bar opposes the Petition's proposed amendments. However, the Bar
2 respectfully asks the Supreme Court to create a task force to further investigate the
3 issues and determine whether there are other possible solutions.
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5 **III. CONCLUSION.**

6 The State Bar of Arizona opposes the Petition to Amend Arizona Rules of
7 Civil Procedure 4.1, 4.2 and 5, and adding Rule 4.3 regarding filing notices of claim
8 with the person or persons authorized to accept service pursuant to A.R.S. § 12-
9 821.01(A). However, the State Bar recognizes that there are legitimate issues and
10 concerns that affect the rights and interest of public entities, public employees, and
11 claimants. The State Bar requests that the Court form a Task Force to further
12 investigate the issues and determine whether there are other possible solutions.
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15 RESPECTFULLY SUBMITTED this 1st day of May, 2026.

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17 *Jessica J. Fotinos*

18 _____
19 Jessica J. Fotinos
20 General Counsel

21 Electronic copy filed with the
22 Clerk of the Supreme Court of Arizona
23 this 1st day of May, 2026.

24 by: PSequin
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