

1 WILLIAM G. MONTGOMERY  
2 MARICOPA COUNTY ATTORNEY  
(FIRM STATE BAR NO. 00032000)

3 MARK C. FAULL  
4 CHIEF DEPUTY  
301 WEST JEFFERSON STREET, SUITE 800  
5 PHOENIX, ARIZONA 85003  
TELEPHONE: (602) 506-3800  
(STATE BAR NUMBER 011474)

6 IN THE SUPREME COURT OF THE STATE OF ARIZONA

7 IN THE MATTER OF:

R-11-0031

8 PETITION TO AMEND RULE 4.1(i),  
9 ARIZONA RULES OF CIVIL PROCEDURE.

MARICOPA COUNTY ATTORNEY'S  
COMMENT TO PETITION TO AMEND  
RULE 4.1 (i), ARIZONA RULES OF CIVIL  
PROCEDURE

10 The Maricopa County Attorney hereby comments to the Petition to Amend Rule 4.1(i) of  
11 the Arizona Rules of Civil Procedure.

12 Respectfully submitted this 18<sup>th</sup> day of May, 2012.

13 WILLIAM G. MONTGOMERY  
14 MARICOPA COUNTY ATTORNEY

15 BY:

  
16 Mark C. Faull  
17 Chief Deputy  
18  
19  
20  
21

1           The Maricopa County Attorney’s Office (MCAO) agrees with the general intent of the  
2 Petition to Amend Rule 4.1(i) of the Rules of Civil Procedure filed by members of the Plaintiff’s  
3 bar. However, MCAO believes the State Bar’s alternative proposal presents a more reasonable  
4 approach to the problem raised. MCAO agrees that the existing situation under current Rule 4.1(i)  
5 may present some unnecessary hurdles for plaintiffs trying to provide notice and/or serve certain  
6 governmental entities. Like the State Bar, though, we are uncomfortable with the scope of the rule  
7 changes suggested in the Petition.

8           While some entities (like Maricopa County) readily disclose the identity and address of  
9 individuals to whom notices of claims should be sent, other public entities do not have such  
10 processes. Thus, we agree that Rule 4.1(i) can be improved. It is currently a “one size fits all” rule  
11 that applies to counties, cities, towns and other political subdivisions of varying sizes and  
12 structures. The language of 4.1(i), referring as it does to “the chief executive officer, the secretary,  
13 clerk, or recording officer thereof,” is antiquated and inapplicable to many modern entities.

14           That said, the change proposed in the Petition would be very problematic, especially for  
15 smaller public entities. Under the proposed rule change, a complaint or claim could sit in an unused  
16 mailbox for a long time. Further, the Petition alleges that “claimant lawyers are often forced to track  
17 down, stalk, or literally stake out high-level public-entity officials and executives to accomplish  
18 basic service of a notice of claim on public entities.” This appears to greatly overstate the problem.

19           Instead, the more measured suggestions within the State Bar’s proposal would offer  
20 alternatives on how service can be accomplished for various categories of public entities, and would  
21 thus eliminate the necessity of litigation over an elementary issue.

1 MCAO also recognizes, as does the State Bar, that a complete fix of the issue would be  
2 required by legislative action, such as requiring all jural governmental entities to designate a person  
3 to receive service of process. This designation would eliminate uncertainty for the entities being  
4 served because those entities would have to select a person who would understand that he/she could  
5 receive service of process. It would also eliminate uncertainty for parties with claims against those  
6 entities about whom to serve. MCAO thus supports the State Bar's suggestion that legislative  
7 change be sought.

8 For these reasons, MCAO opposes the Petition as written but supports the State Bar's  
9 alternative proposal.

10 Respectfully submitted this 18<sup>th</sup> of May, 2012.

11 WILLIAM G. MONTGOMERY  
12 MARICOPA COUNTY ATTORNEY

13 BY: 

14 Mark C. Faull  
15 Chief Deputy  
16  
17  
18  
19  
20  
21