

## ARIZONA SUPREME COURT HOLDS NOTICE OF CLAIM NOT INVALIDATED BY A PLAINTIFF'S IMPROPER ATTEMPT TO REDUCE TIME FOR A MUNICIPALITY TO RESPOND

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*Kizzen v. City of Peoria*

Arizona Supreme Court

July 18, 2022

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In *Kizzen*, a 2018 vehicular accident occurred and resulted in the killing of a minor as he walked home from school. The minor's mother delivered a timely notice of claim to the City that undisputedly complied with the notice of claim statute. However, the notice of claim included a provision that "[t]his compromise to settle is valid for thirty (30) days from the date of this letter." A.R.S. § 12-821.01(E) provides that a notice of claim "is deemed denied sixty days after the filing of the claim," unless the public entity denies it earlier. The City never responded to the notice of claim.

More than six months after serving the notice of claim, the Plaintiff filed a wrongful death lawsuit against the City and others. The City moved to dismiss the complaint. Then, the trial court granted the motion. In its ruling, the trial court explained that a notice of claim "is not deemed denied until sixty days after filing unless the public entity denies" it earlier, pursuant to § 12-821.01. Thus, the trial court concluded the Plaintiffs' claim was barred by § 12-821.01(E) for not keeping the settlement offer open for at least sixty days. The trial court then dismissed the notice of claim with prejudice because the statutory 180-day time period to file a valid notice of claim had passed.

The Court of Appeals affirmed this decision reasoning that the Plaintiff "failed to comply with the language and purpose of the notice of claim statute" by providing a 30 day settlement offer window. Further, it held that "although James was at liberty to issue a general settlement offer that included a shorter window for acceptance," doing so meant that this "contract offer" was "ineligible to concurrently serve as her notice of claim under the statute."

The Arizona Supreme Court reversed, holding that a notice of claim otherwise in compliance with § 12-821.01(A) is not invalid because it purports to set a deadline for settlement prior to the sixty-day period in § 12-821.01(E). The Court noted that none of the statutory prerequisites for a valid notice of claim required a claimant to keep a settlement offer open for any particular length of time. With regard to 12-821.01(E), the Court held that it only created a deadline for the public entity (not a claimant). The Court also held that an offer that any attempt by a claimant to shorten the public entity's statutory sixty-day response period is a legal nullity. And because the claimant did not have the statutory or other legal authority to impose a shorter time for the City to respond, her attempt to do so in the notice of had no effect and did not invalidate her otherwise valid notice of claim.

Finally, the Court left open the question of whether Arizona law permitted a claimant to file a lawsuit against a public entity after the claimant has filed a notice of claim but before the expiration of the sixty-day period in §12-821.01(E), since that issue was not before it.

Thus, the Court reversed the trial court's grant of summary judgment in favor of the City and dismissal of the Plaintiff's complaint with prejudice, and remanded for further proceedings.

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[Justin Ackerman](#) represents clients in federal and state appellate matters in cases involving excessive force, wrongful death, personal injury, bad faith, and premises liability. He's a 2022 Southwest Super Lawyers Rising Star and a two-time Best Lawyers in America: Ones to Watch recipient.

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