

## NOTICE OF CLAIM STATUTE APPLIES TO ELECTED OFFICIALS

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*Villasenor v. Evans*

Arizona Court of Appeals, Division One, December 20, 2016

In this case, the court of appeals confirmed that the notice of claim statute applies to elected officials. Villasenor was a consultant and lobbyist for a developer that faced public opposition to its efforts to obtain a zoning change from the Flagstaff City Council for multi-family housing. He sued Evans, vice-mayor and an elected member of the city council, for defamation. Villasenor admitted that he failed to serve Evans with a notice of claim, but argued none was needed because Evans was not a public employee or had acted outside her public employment.

The court of appeals rejected both arguments. Villasenor first argued that notices of claim must be sent only to “public employees,” and not “public officials,” because the statute’s definitional section separates out the two. The court held that public employees are a subset of the “employees” identified in A.R.S. § 12-820(1), and because the definition of “employee” includes “officer,” Evans is a public employee under the statute. This interpretation, said the court, is consistent with the purpose of A.R.S. § 12-821.01 to facilitate the public entity’s ability to investigate and assess liability, undertake financial planning and budgeting, and settle claims.

The court then held that Villasenor failed to create a genuine fact issue on whether Evans was acting within the scope of her employment. The record showed that the alleged defamation arose out of an email Evans wrote to a newspaper asking it to correct misinformation about a public meeting that had occurred regarding the planned housing project. The court said this meeting was exactly the type of action in which a vice-mayor would normally engage to facilitate the exchange of ideas and information about an issue of public importance. The court therefore affirmed summary judgment for Evans due to Villasenor’s failure to serve Evans with a notice of claim.

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