

COURT UPHOLDS CONSTITUTIONALITY OF A.R.S. §12-2603 REQUIRING AFFIDAVIT MEDICAL MALPRACTICE CASES

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Jilly v. Rayes

Ct. Appeals, Div. One, April 30, 2009

Authored by the [JSH Appellate Team](#)

Plaintiffs sued doctors for medical medical malpractice and wrongful death. Doctors filed a motion to require Plaintiffs to comply with A.R.S. § 12-2603 by certifying whether expert testimony was necessary to prove the standard of care or liability issues in the case. Plaintiffs argued the statute unconstitutionally infringed on the court's rulemaking authority.

The court of appeals held the statute constitutional, reasoning that it does not conflict with Rule 16(c), Ariz. R. Civ. P. Rule 16(c) states that a schedule for disclosing expert witnesses will be determined at the pretrial conference. The statute requires the claimant to serve a "preliminary expert opinion affidavit" with the initial Rule 26.1 disclosures. The court held the statute does not conflict with the Rule because the statute speaks only of a provisional ("preliminary") affidavit and does not require that expert to serve as the expert at trial. Further, the statute gives the trial court discretion to extend the statute's timeframe. See A.R.S. §12-2603(C). Thus, it is not an unconstitutional infringement of the court's rulemaking power.