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## **FAILURE TO COMPLY WITH NOTICE OF CLAIM STATUTE NOT EXCUSED BY ACTUAL NOTICE, SUBSTANTIAL COMPLIANCE, OR EXCUSABLE NEGLIGENCE**

July 1, 2010 | Law Alerts

*Simon v. Maricopa Medical Center*  
Ct. Appeals, Div. One, July 1, 2010

Authored by the [JSH Appellate Team](#)

Simon filed suit against Maricopa Medical Center, the City of Phoenix Police Department, and individual police officers. Maricopa Medical Center and the City of Phoenix Police Department moved to dismiss on the ground they are non-jural entities that cannot sue or be sued. Their true legal identities are the Maricopa County Special Health Care District and the City of Phoenix, respectively. The trial court agreed and granted the motion to dismiss. On appeal, the court determined that the misnomer was a non-prejudicial technical error that did not warrant dismissal, but instead required leave to amend.

Plaintiff also neglected to timely serve the notice of claim on each individual police officer. The officers moved for dismissal. The trial court rejected Plaintiff's arguments that the individuals' actual notice, or Plaintiff's substantial compliance or excusable neglect cured the defect, and dismissed Plaintiff's complaint as to the officers. The court of appeals affirmed on this issue, ruling that timely personal service of the notice of claim was required to perfect Plaintiff's claim.