

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-016329

07/18/2008

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

JOHN GILDING

MICHAEL W PEARSON

v.

JOHN S CARR, et al.

DAVID N FARREN

ALAN N ARIAV

MINUTE ENTRY

The Court of Appeals having declined to accept Special Action jurisdiction, the Court can now rule on Defendants' Marks' Motion For Reconsideration.

First, the Court notes that the Dead Man's Statute does not have any relevance to this case. The statute reads, "In an action by or against personal representatives, administrators, guardians or conservators in which judgment may be given for or against them as such, neither party shall be allowed to testify against the other as to any transaction with or statement by the testator, intestate or ward unless called to testify thereto by the opposite party, or required to testify thereto by the court. The provisions of this section shall extend to and include all actions by or against the heirs, devisees, legatees or legal representatives of a decedent arising out of any transaction with the decedent." To the best of the Court's knowledge, none of the parties is a personal representative, administrator, heir, devisee, legatee, or legal representative of Linda Petersen's estate, much less a party to this litigation in that capacity. "The salutary purpose of the [Dead Man's] statute is not to preclude all testimony of transactions with deceased persons, regardless of the controversy in which offered. It is, rather, to render incompetent as witnesses persons who will gain from inaccurate distortion of a transaction with decedent, where the interests in issue affect certain representatives of decedent *in their capacity as such*, and where death has rendered decedent incapable of giving the lie to the inaccuracies." *Carrillo v. Taylor*,

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81 Ariz. 14, 25 (1956) (emphasis added). It appears to the Court that the real issue with regard to the admissibility of what Ms. Petersen might have told Ms. Owens is whether it falls under Rule 804(b)(5), a very different question which the Court does not at this time address.

A quick review of the original Motion to Disqualify reveals only a brief mention of Linda Owens, as the sender of an e-mail accusing Mr. Pearson's firm of threatening her and her "cadre of co-conspirators" with a lawsuit. None of the other allegations in the Motion for Reconsideration – Mr. Pearson's defamatory letters to public officials, his disparaging comments at the workplace and on the website, his letter accusing her of being a hazard to aviation safety – is mentioned in either the original Motion or its Reply. It is procedurally improper to introduce new material in a motion for reconsideration to which there is presumptively no opportunity for response.

Therefore, IT IS ORDERED denying Defendants Marks' Motion For Reconsideration.