

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-016329

08/04/2008

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 has considered Defendant Carr's Joinder In Motion To Reconsider Motion To Disqualify Plaintiff's Counsel, Plaintiff's request to file Supplemental Reply and the briefs.

Procedurally, Plaintiff's Request To File Supplemental Reply is not well taken. Procedurally, Defendant Carr's Joinder in Motion to Reconsider Motion to Disqualify is improper, as Defendant Carr was not a party to the motion on which reconsideration is sought. The motion for Rule 11 sanctions did not apply to Defendant Carr for the same reason. It also in part is based on a ground that was never argued with respect to the original motion. Nowhere did Defendant Marks's Motion to Disqualify, or its Reply, which (improperly) added considerable new material, argue that an attorney-client relationship ever existed between him and Mr. Pearson. That claim first appears in the Response to Plaintiff's Motion to Strike: a conversation described as "threatening," in which Mr. Pearson indicates that he would sue Mr. Marks if he did not stop posting on Mr. Carr's blog, is said to have created a subjective belief that Mr. Pearson was representing Mr. Marks. It is briefly (and again improperly) alluded to, with no argument beyond a reference to that Response, in a single sentence of the (first) Motion for Reconsideration. The Court found, and still finds, that claim lacks merit. The fact that an attorney warns a non-client that his conduct may lead to legal action from their clients does not thereby create an attorney-client relationship. That Mr. Marks did not believe Mr. Pearson's

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gratuitous warning to be legal advice is evident from the fact that in the original motion, although he recounts the same conversation at greater length, he does not suggest that as a result of it he believed Mr. Pearson to be acting as his attorney; it is clear from Mr. Marks's own description that both parties considered their relationship adversarial. Furthermore, Defendant Carr does not have standing to raise the issue at all. It in no way infringes on *his* rights if another defendant's rights are allegedly violated.

The Court does not intend to reiterate its ruling with respect to Mr. Pearson's potential testimony. Defendants' intentions have been made clear to Plaintiff; if Plaintiff wishes Mr. Pearson to continue as his counsel, that is his choice.

Therefore, IT IS ORDERED:

1. Denying Defendant Carr's Joinder In Motion To Reconsider Motion To Disqualify Plaintiff's Counsel.
2. Denying Plaintiff's Motion To file Supplemental Reply.