

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-037171

08/05/2025

HONORABLE JOSEPH KREAMER

CLERK OF THE COURT
J. Zinkowich
Deputy

YUKON HELICOPTERS INC

MICK LEVIN

v.

WILLIAM D HOLM, et al.

DONALD WILSON JR.

JOHN K WITTWER
JUDGE KREAMER

MINUTE ENTRY

The Court has received and reviewed Defendant Tolliver Law Firm, P.C.'s ("Tolliver") May 23, 2025, Motion to Dismiss, Plaintiff's Response in opposition, Defendants Holms' and Jones, Skelton & Hochuli's Response in opposition, and Defendant Tolliver's Reply. Defendant Tolliver's Motion argues that dismissal of Tolliver is appropriate because Plaintiff's claim against Tolliver is based on a claim that Tolliver is vicariously liable for the acts of Defendant Dugger, and the Court "can take judicial notice of public records" showing that at the time of alleged negligence Dugger was no longer Tolliver's employee. According to Tolliver, this establishes that "Tolliver cannot be vicariously liable."

The Court disagrees with Tolliver's analysis. First, the facts that Tolliver wants the Court to accept are outside the pleadings. While it is true that this Court may take judicial notice of facts that "are not subject to reasonable dispute" (*see* Rule 201, Arizona Rules of Evidence), Tolliver asks the Court to assume a Complaint filed by the Office of Disciplinary Counsel for the State of Montana, which alleges that Dugger filed a substitution of counsel notice, itself establishes as an undisputed fact that Dugger was no longer Tolliver's employee. This Court will not automatically assume that facts alleged in other records are true. *See, e.g., Scottsdale Memorial Health Systems, Inc. v. Clark*, 157 Ariz. 461, 468 (1988). And, even if it were true, the

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mere filing of a notice that Dugger had started his own firm before the alleged negligence occurred does not automatically lead to the legal conclusion that Dugger was no longer an employee of Tolliver. It is legally possible for an attorney to establish their own practice, while at the same time being employed by another firm. Thus, while Tolliver may eventually establish a lack of vicarious liability, it has not yet done so.

Second, the First Amended Complaint and soon to be operative Third Amended Complaint¹ both allege independent negligence by Tolliver. Accordingly, even if the Court were to take judicial notice of Dugger's exit date and attach legal significance to it, an independent claim would remain.

IT IS ORDERED for the reasons set forth above, Defendant Tolliver's Motion to Dismiss is denied.

¹ Plaintiff filed a Motion for Leave to File Third Amended Complaint on June 30, 2025. Defendant Tolliver's Response stated that if the Court denies Tolliver's Motion to Dismiss, Tolliver does not oppose the amendment. Accordingly, the Court will grant the Motion to Amend by separate Minute Entry.