

**IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
FIFTH DIVISION**

**ROSEY PERKINS and RHONDA COPPAK,
Individually and as Co-Administratrixes
And Personal Representatives of the
Estate of Martha Bull, Deceased**

PLAINTIFFS

vs.

Case No. 23CV-14-862

**MICHAEL MAGGIO, Individually and
In His Official Capacity; MICHAEL MORTON;
GILBERT BAKER; And JOHN DOES 1-5**

DEFENDANTS

**MICHAEL MORTON'S RESPONSE TO
PLAINTIFFS' MOTION TO TAKE JUDICIAL NOTICE**

Comes now separate defendant, Michael Morton ("Morton"), and respectfully submits his Response to Plaintiffs' Motion to Take Judicial Notice.

Plaintiffs ask the Court to take judicial notice of Michael Maggio's plea agreement and bribery conviction under Rule 201 of the Arkansas Rules of Evidence. Plaintiffs assert that Maggio's plea agreement contains Maggio's admissions and/or statements, which "cannot be disputed."

"A judicially noted fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Ark. R. Evid. 201(b).

While Morton does not dispute that Maggio pled guilty pursuant to a plea agreement offered in his criminal case, Morton does dispute the factual statements Maggio made in such plea agreement as they pertain to Morton. Thus, such factual statements are subject to dispute and cannot be judicially noticed by this Court.

Further, the Arkansas Supreme Court "has clearly stated that judicial notice may not be taken of the record in a separate case." *Throneberry v. State*, 102 Ark. App. 17, 22, 279 S.W.3d 489, 493 (2008) (citing *Smith v. State*, 307 Ark. 223, 818 S.W.2d 945 (1991); *Leach v. State*, 303 Ark. 309, 796 S.W.2d 837 (1990)); see also *Baxter v. State*, 324 Ark. 440, 446, 922 S.W.2d 68, 685 (1996). As the authors of the Trial Handbook for Arkansas Lawyers note, "[u]nless the proceedings are put into evidence, courts will not travel outside a record in order to notice proceedings in another case, even between the same parties in the same court." *3 Trial Handbook for Arkansas Lawyers* § 46.11 (2015-016 ed.).

Further, a court ordinarily "will not, either upon its own motion or upon suggestion of counsel, take judicial notice of records, judgments, and orders in other and different cases or proceedings, even though such cases may be between the same parties and in relation to the same subject matter." *3 Trial Handbook for Arkansas Lawyers* § 46.11 (2015-016 ed.) (citing *Parker v. Sims*, 185 Ark. 1111, 51 S.W.2d 517 (1932); *Hurst v. Hurst*, 255 Ark. 936, 504 S.W.2d 360 (1974)). Simply stated, "[c]ourts do not take judicial notice of prior litigation of other cases." *Id.* (citing *Leach, supra*; *Smith, supra*).

For these reasons, Morton respectfully requests that the Court deny Plaintiffs' Motion to Take Judicial Notice.

RESPECTFULLY SUBMITTED BY:

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CERTIFICATE OF SERVICE

I, John C. Everett, do hereby certify that on this 7th day of October, 2016, the foregoing pleading was sent via electronic mail and U.S. Mail, postage prepaid and properly addressed to the following:

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