

Honorable Judge Richard D. Eadie
Hearing Date: November 10, 2011
Hearing Time: 9:00 AM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

LANE POWELL, PC, an Oregon
professional corporation,

Plaintiff,

No. 11-2-34596-3 SEA

v.

MARK DECOURSEY and CAROL
DECOURSEY

Defendants

**MOTION FOR DISCOVERY
PROTECTION UNDER CR 26(c)
AND SANCTIONS UNDER CR 26(i)
AND SUBJOINED DECLARATION**

A. INTRODUCTION

Lane Powell PC ("Lane Powell") represented Mark and Carol DeCoursey ("DeCourseys") in a Consumer Protection Act lawsuit ("Windermere lawsuit") in which DeCourseys were defendants and cross-complainants (case #06-2-24906-2 SEA). DeCourseys prevailed in the 2008 trial, and were awarded \$522,200 in damages. DeCourseys were subsequently awarded \$463,427.00 in attorney fees and \$45,442 in costs.

The Final Judgment on the Windermere lawsuit has not yet been entered.

On August 3, 2011 having already paid Lane Powell \$313,253.00, DeCourseys discharged Lane Powell. On the same day, Lane Powell filed an attorney's lien on the judgment for an additional \$384,881.66 (for which Lane Powell is now claiming continuously accruing interest) bringing the total fee claimed by Lane Powell to more than

1 Windermere's Discovery tactics included threats to pursue and admit into evidence
2 DeCourseys' political and religious views.

3 Windermere continued its scorched earth tactics through levels of appeal, often
4 running up expenses that were not recoverable under the CPA. Windermere's tactics
5 vitiated much of the attorney fee award under the CPA.¹ Throughout, Lane Powell took no
6 action to staunch the attorney fee attack on DeCourseys. Lane Powell's fees simply went
7 up and up.

8 The Superior Court case docket ran to 451 (four hundred fifty one) documents and
9 actions. **Exhibit B.**

10 Windermere appealed. DeCourseys substantially prevailed at the Court of Appeals
11 and Windermere asked for a reconsideration, which the Court refused. The Court of
12 Appeals docket ran to 97 (ninety seven) documents and actions. **Exhibit C.**

13 Windermere petitioned the Supreme Court for review. On April 26, 2011, the
14 Supreme Court declined to review the case. The Supreme Court docket ran to 36 (thirty six)
15 documents and actions. **Exhibit D.**

16 In summary, at this time, these are the case docket lengths for the Windermere
17 lawsuit:

Court	Case	Docket Length	Exhibit
District Court		(At least 16)	-
Superior Court	06-2-24906-2	451	Exhibit B
Court of Appeals	629123	97	Exhibit C
Supreme Court	855633	36	Exhibit D
Total		600	

18
19
20
21
22
23 Discovery produced another dozen banker boxes full of documents not shown in the
24 dockets. The Clerk's Papers ran to 1458 pages.

25
26 ¹ The court awarded DeCourseys a total of \$523,006.50 for attorney fees. Lane Powell has billed DeCourseys
for \$698,134.66 and expects continuing interest. DeCourseys' other direct expenses for the Windermere
lawsuit exceed an additional \$75,000. The property at issue cost \$280,000 in 2004.

1 At the Windermere trial in Superior Court in 2008, the essential documents of the
2 case were lined up in about eight linear feet of binders on the front bench of the courtroom,
3 with more documents in a dozen banker boxes on the floor. Photograph at **Exhibit E**.

4 All materials shown in that photograph were retained by Lane Powell after the trial.

5 On October 18, 2011, the trial court received the remand for the recalculation of
6 costs. The remand has not been heard and Final Judgment has not been entered on that
7 case.

8 On August 3, 2011, while the case was waiting for a ruling on fees from the
9 Supreme Court, DeCourseys discharged Lane Powell. Lane Powell filed a lien on the
10 judgment. On September 22, 2011, DeCourseys sent Lane Powell a letter outlining the
11 issues in dispute and seeking peaceful resolution.

12 Then on October 5, 2011, Lane Powell filed this lawsuit for breach of contract,
13 *quantum meruit*, and foreclosure of the lien. **Exhibit F**.

14 With the summons and complaint, Lane Powell also served a set of discovery
15 requests, **Exhibit G**, and notifications for videotaped deposition of DeCourseys, **Exhibit H**.
16 Those discovery requests are the subject of this motion.

17 Lane Powell's discovery requests, **Exhibit G**, include:

- 18 • Interrogatory #1: "identify all persons with knowledge concerning your
19 relationship with Lane Powell."
- 20 • Request for Production #1: "all documents referring to or relating to the
21 Windermere lawsuit."
- 22 • Request for Production #2, "all documents reflecting or relating too your
23 communications with Plaintiff."
- 24 • Request for Production #3, "all documents relating to the fees and costs for the
25 Windermere lawsuit."
- 26 • Request for Production #4, "all documents relating to any agreement between

1 3. Lane Powell might also argue that though the information was shared earlier,
2 Lane Powell may have misplaced some of the information and needs it all.

3 To that, DeCourseys answer that Lane Powell is now in the same position as any
4 other litigant with regard to DeCourseys' privileged information. Without judicial override,
5 privileged information is simply not susceptible or available to discovery. [CR 26(b)(1)]

6 DeCourseys are confident that Washington courts would be unwilling to put all
7 clients in thrall to their attorneys; else any attorney could force his client to divulge all his
8 confidences on the simple device of filing a lawsuit against the client.

9 **Unduly Burdensome, Expensive, and Obtainable from Another Source.** The
10 Windermere lawsuit was commenced in 2006 when DeCourseys were sued by an electrical
11 subcontractor.

12 Yet in RFP #1, Lane Powell requests, "Please produce any and all documents
13 referring to or relating to the Windermere lawsuit." This information is of course available
14 from the court. But the request includes not merely the volume of documents in the files of
15 court, but also "working papers, records, files, memoranda, invoices, correspondence, e-
16 mails, instant messages, SMS messages, drawings, schedules, cost sheets and quotation
17 forms, bids, computer-generated and mechanically-created records, laser discs, ..." -- the
18 request list goes on exhaustively for another dozen lines.⁷

19 During the course of the Windermere lawsuit, Lane Powell charged DeCourseys
20 more than \$10,000 in "costs advanced" for document "reproduction." If those costs are
21 honestly derived,⁸ this one request must reasonably require DeCourseys to incur another
22 \$10,000 for document reproduction. When these facts were brought to Lane Powell's
23 attention in the email discussion, Lane Powell responded:

24 _____
25 ⁷ The dockets for the various courts in this case extend to 600 entries. See table on page 4.

26 ⁸ This is not an admission that the "reproduction" costs were honestly derived. But Lane Powell's two propositions are in contradiction: either the discovery request is reasonable and the "costs advanced" are not, or the "costs advanced" are honestly derived and the discovery request is not reasonable.

1 discovery requests as outlined in the accompanying proposed order.

2 Given the overtly abusive and oppressive nature of these discovery requests and the
3 improper purposes exposed thereby, the court should also order that DeCourseys are
4 protected from examination of their religious and political beliefs, writings, and activities,
5 and other topics not reasonably calculated to lead to the discovery of admissible evidence in
6 this case, remembering this is a lawsuit about a legal services contract, the attorneys'
7 fiduciary duty to its client, and an attorney's lien.

8 The court should censure Lane Powell's counsel for giving DeCourseys deliberately
9 false advice concerning the Civil Rules, per RPC 4.1.

10 The court should sanction Lane Powell and its attorney for refusing to confer on
11 discovery objections per CR 26(i).

12 **H. PROPOSED ORDER**

13 A proposed order accompanies this motion.

14 November 2, 2011
15 Date

14 Mark H. DeCoursey
15 Mark H. DeCoursey
16 Pro se

17 November 2, 2011
18 Date

17 Carol A. DeCoursey
18 Carol A. DeCoursey
19 Pro se