Honorable Judge McDermott
Honorable Judge Richard D. Eadie
Hearing Date: 08/14/12
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,

v.

MARK DECOURSEY and CAROL DECOURSEY

Defendants

No. 11-2-34596-3 SEA

DECOURSEYS' REPLY IN SUPPORT OF MOTION TO VACATE AND RECUSE AND SUBJOINED DECLARATION

1. RELIEF REQUESTED

DeCourseys respectfully request Judge Eadie, presiding in this case, to vacate all orders he has issued on the case and recuse himself.

2. STATEMENT OF FACTS

Evidence of Prejudice: Lane Powell's Latest Prevarication. Lane Powell asserts the DeCourseys have "no evidence demonstrating the actual prejudice or potential bias necessary for judicial qualification." Probably the most convincing evidence of this judge's bias is the fact that he has allowed Lane Powell's attorneys to repeatedly make false statements to the court despite overwhelming proof that those statements were false, granted the motions based on those false statements, and then ordered DeCourseys to pay Lane

Mark & Carol DeCoursey, *pro se*
8209 172nd Ave NE
Redmond, WA 98052
Telephone 425.885.3130

Powell's attorneys for abusing the courts in this fashion.

In further perjury, Lane Powell's attorneys Sulkin, Eaton, & Montgomery state in their *Opposition*: "Lane Powell filed and served an attorneys lien in the Windermere lawsuit after judgment has been entered against Windermere." (Pg. 4, Lines 12-14)

As "proof," Lane Powell's attorneys cite to Lane Powell's lien**,** clearly dated **August 3, 2011**, attached as Exhibit A to the *Opposition*. But the Amended Final Judgment was filed on **November 3, 2011**. See **Exhibit A** of this Reply. August comes *before* November. So no, Lane Powell did not file its lien after judgment had been entered. Lane Powell filed its lien *before* judgment had been entered.

Sulkin, Eaton, & Montgomery also state: "In fact, before this lawsuit had even begun, Windermere was obligated and (eventually did) pay the judgment against it." This is another lie. Lane Powell filed its lawsuit on **October 5, 2011**. The First Partial Payment of Judgment was filed on **November 4, 2011**. **Exhibit B.** October comes *before* November. Thus Windermere did not pay a penny until well *after* Lane Powell filed this lawsuit.

Lying to the courts is perjury. RCW 9A.72. A judge who allows attorneys to lie in his court is aiding and abetting such perjury and denigrates the court system in the eyes of the public.

The Relevant Facts. Sulkin, Eaton & Montgomery cite *Marriage of Meredith* thus: "The test for determining whether a judge's impartiality might reasonably be questioned is an objective one that assumes the reasonable person knows and understands all the relevant facts." In this case, the relevant facts were supplied by the Public Disclosure Commission: Claire Eadie is/has been a Windermere broker/agent for almost a decade and her

Mark & Carol DeCoursey, *pro se*
8209 172nd Ave NE
Redmond, WA 98052
Telephone 425.885.3130

commissions have contributed at least $289,000 to the Edie family income between 2003-2012. The Eadie's family holding in the Windermere Retirement Plan is between $40,000 and $99,999. A reasonable person who knows these facts *would* doubt a judge's impartiality in the present case. But of course attorneys who have the gall to tell provable lies about fundamental documents –lies about the date a lawsuit was entered or the date a judgment was entered – and tell those lies in court, over their signatures -- are not reasonable persons. They are people who, for the price of their legal fees, would swear on the Bible that up is down, black is white, and August 3, 2011 really comes after November 3, 2011. They are also attorneys who would, for the price of their legal fees, find ***no*** appearance that Judge Eadie had a conflict of interest vis a vis his wife's Windermere employment ... Perhaps they will next tell the court the earth is flat and expect the court and the Washington public to swallow that, too.

Lane Powell's Malpractice Advantaged Windermere. In their *Opposition*, Sulkin, Eaton & Montgomery state that "Lane Powell and the DeCourseys were equally adverse to Windermere in the underlying lawsuit."[1] (Page 4, Line 5-6) This is not true. During the course of the Windermere lawsuit, Lane Powell committed various acts of malpractice which disadvantaged DeCourseys and benefited Windermere. Lane Powell attempted to negate DeCourseys pretrial advantage by insisting Windermere's experts be admitted to their home after close of discovery. DeCourseys refused – with the result that Windermere had no expert witnesses to present to the jury. On the eve the announcement of the jury verdict,

[1] Is Lane Powell suggesting that a judge is not disqualified if he is equally prejudiced against both parties? The suggestion is bizarre. Judge Eadie is not supposed to be betting on either horse in a race over which he is presiding.

Mark & Carol DeCoursey, *pro se*
8209 172nd Ave NE
Redmond, WA 98052
Telephone 425.885.3130

Lane Powell recommended DeCourseys surrender and accept $250,000 from Windermere – a sum that would not even cover Lane Powell's legal fees. DeCourseys refused, and thus were awarded the $1.2 million victory – a victory Lane Powell claims was the result of *its* efforts. When DeCourseys spoke with Lane Powell's Grant Degginger after the trial victory, Degginger told DeCourseys that the victory was "not good" for Lane Powell. Obviously Lane Powell must not have wanted a victory that was not "good" for it. The trial judge ordered Windermere to pay 12% post judgment interest, but Lane Powell, without DeCourseys' knowledge or consent, made an agreement with Windermere to accept 3.49% post judgment interest. When DeCourseys wanted Lane Powell to petition the Supreme Court and present evidence about the way in which Windermere was routinely flouting real estate and consumer protection laws with the complicity of the Department of Licensing and the Attorney General's Office, was conducting scorched earth litigation and abusing court process – and thus gaining advantage over its competitors -- Lane Powell refused to so petition the Supreme Court. Lane Powell's Grant Degginger, then City Councilman/Mayor of Bellevue, shamelessly lied to DeCourseys, telling them that the Supreme Court had "no discretion" and pretended he didn't know court precedents effectively "made" law. When DeCourseys fired Lane Powell on August 3, 2011, Lane Powell was still trying to give away more of the post-judgment interest due to DeCourseys.

Judge Eadie Informed of Facts. DeCourseys informed Judge Eadie of these facts. But a judge whose family derives economic benefit from Windermere would certainly have a vested interest in seeing that Windermere' business practices remained undisturbed. As the famous proverb states: "The enemy of my enemy is my friend." Such a judge would have a

Mark & Carol DeCoursey, *pro se*
8209 172nd Ave NE
Redmond, WA 98052
Telephone 425.885.3130

vested interest in seeing that Lane Powell (i.e., Grant Degginger), who covertly tried to aid Windermere whenever possible, derive as much benefit, and DeCourseys derive little benefit, from the Windermere award.

Fatuous Reasoning: No Need for Code of Judicial Conduct. According to Sulkin, Eaton, & Montgomery, "... if the Court believed his alleged affiliation with Windermere presented a potential conflict of interest, the Court would have disclosed the fact long ago." Page 4, Lines 8-10. They then cite CJC 2.11, Cmt. 5. But if judges always did what was honorable, there would be no need for a Code of Judicial Conduct. And there would be no need for a Commission on Judicial Conduct, no need for a Public Trust and Confidence Committee. But these Codes and organization exist **because** some judges betray the public trust and conduct themselves badly, or use poor judgment in matters of conflicting interests.

Fatuous Reasoning: No Need for Appeals Courts. According to Sulkin, Eaton & Montgomery, DeCourseys "do not like the fact that they must comply with Court orders . . ." Those attorneys would give the world to understand that trial courts ***always*** arrive at the right decisions, and only sore losers complain. If that were so, there would be no reason for Courts of Appeal or Supreme Courts. On the other hand, people like Ms. Eaton and Ms. Montgomery might be denied the right to an abortion if *Roe v. Wade* had not been decided on appeal; so the appeals process can serve some good purpose.

Words Mean Their Opposite. On December 12, 2011, Judge Eadie ordered: "… the civil rules will govern discovery." **Dkt. 44.** On March 2, 2012 Judge Eadie ordered: "The DeCourseys must respond to discovery requests in full with evidence and materials in accordance with this court's order of February 2/3/2012 in accordance with CR 26(b) and ER

Mark & Carol DeCoursey, *pro se*
8209 172nd Ave NE
Redmond, WA 98052
Telephone 425.885.3130

502." **Dkt. 98.**

On April 27, 2012, Judge Eadie without apparent cause or explanation, abruptly reversed himself. **Dkt. 106A.** Judge Eadie not only reversed himself, but found DeCourseys in contempt for having followed his earlier orders. Later, on August 2, 2012, **Dkt. 187**, Judge Eadie issued an order in which he reaffirmed the December 12, 2011 order!

Judge Eadie would give Washington to believe that Washington courts should not be taken seriously, that judges use words to mean whatever Lane Powell wants them to mean, that "privilege" does not mean "privilege" and "the Civil Rules" do not mean "the Civil Rules." Judge Eadie's deceptive use of words reveals extreme prejudice against DeCourseys.

RCW 9A.56.110 Extortion. Under Washington law, extortion is an attempt to obtain *by threat* property or services of the owner. On October 5, 2011, the very day Lane Powell filed its lawsuit, it served discovery requests which demanded that DeCourseys waive their attorney client privilege. In the alternative, of course, DeCourseys could simply avoid the threatened disclosure of their confidences by paying Lane Powell's exorbitant fee demands. The next day, October 6, 2011, Lane Powell committed a second act of extortion: Lane Powell's counsel, Robert Sulkin, threatened to use scorched earth litigation to extort DeCourseys into paying Lane Powell's legal bills. Mr. Sulking stated that Lane Powell " . . . would pay $800,000 in fees in this suit to recover $300,000." **Exhibit C**. DeCourseys have already paid Lane Powell approx. $313,253.00. At this writing, Lane Powell demands another $384,881.66 in fees/interest and another $57,036.30 in more interest.

Judge Eadie has been informed of these facts numerous times, but he apparently

Mark & Carol DeCoursey, *pro se*
8209 172nd Ave NE
Redmond, WA 98052
Telephone 425.885.3130

believes Lane Powell's demand of $755,170.96 for its representation in a Consumer Protection Act lawsuit is reasonable, and is willing to overlook RCW 9A.56.110.

Public Esteem of the Courts. Judge Eadie's rulings reveal a jurist who was intractably prejudiced against one of the parties (DeCourseys) and in favor of the other (Lane Powell) from the beginning. It appears he never intended to hold a fair trial. From the beginning, he denied DeCourseys routine protection from abusive litigation tactics. When Lane Powell demanded production of massive volume of documents that were already in Lane Powell's files and DeCourseys moved on November 3, 2011 (**Dkt. 11**) for discovery protection, Lane Powell missed the filing deadline but Judge Eadie denied the motion anyway, refusing to sanction Lane Powell for violating discovery rules. Order at **Dkt. 23.** Judge Eadie *sua sponte* crossed out confidentiality provisions in a November 9, 2011 motion (**Dkt. 16**) for a court-supervised discovery conference under CR 26(f), even though the motion was unopposed. Order at **Dkt 35.** When DeCourseys filed a November 21, 2011 amended motion (**Dkt 24**) for discovery conference under CR 26(f), he accepted Lane Powell's late response without apology or excuse and denied the motion, and refused to sanction Lane Powell for refusing to confer on discovery under the rules. Order at **Dkt. 44**. In an August 3, 2012 order (**Dkt. 187**), he included that Dkt. 44 order, inferring that the Dkt. 44 order was a court-ordered waiver of privilege.

Judge Eadie's rulings against DeCourseys have been so irrational, relentless, and prejudiced, and have departed so far from the accepted and usual course of judicial proceedings, it is hard to avoid the conclusion that, with the assignment of this case to Judge Eadie, the process was intended from the beginning to be an ambush.

Mark & Carol DeCoursey, *pro se*
8209 172nd Ave NE
Redmond, WA 98052
Telephone 425.885.3130

Allowing lawyers to repeatedly perjure themselves in court and use the court system to extort money under threat of spilling the beans on attorney-client privilege undermines the public's trust in its institutions and destroys the fabric of society. DeCourseys reserve their rights under the Constitutions of Washington and the United States, and the Universal Declaration of Human Rights, to bring these anomalous conditions in the practice of law and the conduct of the courts to public attention.

CONCLUSION

Judge Eadie should vacate the orders he has issued to date (under CR 54(b)), apologize to the litigants and his colleagues in the courthouse, and recuse himself from the case. A proposed order accompanies the motion.

RESPECTFULLY SUBMITTED this 16th day of August, 2012.

By _____
Mark DeCoursey, *pro se*

By _____
Carol DeCoursey, *pro se*

Mark & Carol DeCoursey, *pro se*
8209 172nd Ave NE
Redmond, WA 98052
Telephone 425.885.3130

Declaration of Mark DeCoursey

Mark DeCoursey hereby declares as follows:

Being over the age of eighteen and competent to testify, I hereby attest and declare the following under the laws of perjury of the State of Washington:

Exhibit A is a true and fair copy of the November 3, 2011 Amended Final Judgment filed in the Windermere lawsuit, Case Number 06-2-24906-2 SEA.

Exhibit B is a true and fair copy of the November 4, 2011 First Partial Satisfaction of Judgment filed in the Windermere lawsuit, Case Number 06-2-24906-2 SEA.

Exhibit C is a true and fair October 6, 2011 email from Paul Fogarty to DeCourseys.

SIGNED this 16th day of August, 2012.

By _____
Mark DeCoursey, *pro se*

Mark & Carol DeCoursey, *pro se*
8209 172nd Ave NE
Redmond, WA 98052
Telephone 425.885.3130