68671-2-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

MARK DeCOURSEY and CAROL DeCOURSEY, individually and the marital community composed thereof,

Defendants Below/Petitioners,

v.

LANE POWELL PC, an Oregon professional corporation,

Plaintiff Below/Respondent.

LANE POWELL PC'S ANSWER TO DECOURSEYS' SECOND MOTION FOR STAY OF ORDERS

One Union Square
600 University, 27th Fl.
Seattle, WA 98101-3143
(206) 467-1816

McNAUL EBEL NAWROT &
HELGREN PLLC

Robert M. Sulkin, WSBA #15425
Malaika M. Eaton, WSBA #32837
Hayley A. Montgomery, WSBA #43339

Attorneys for Plaintiff Below/
Respondent Lane Powell PC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

I. INTRODUCTION

Mark and Carol DeCoursey ("the DeCourseys") ask this Court to reconsider its previous order denying a stay and second guess the trial court's denial of the same request. They ask—now for the third time—to stay four court orders pending this Court's decision on whether to accept discretionary review: the November 2011 1st Privilege Order[1] denying their request for "discovery protection"; the December 2011 Registry Order ordering them to place additional funds in the Court Registry to protect Lane Powell's lien interests; the Contempt Order holding them in contempt for failing to comply with the Registry and Discovery Orders; and the Registry Reconsideration Order denying reconsideration of the Registry Order. Mot. at 1.

This motion should again be denied. Although the DeCourseys' third attempt at a stay request is longer than their last one and identifies the RAP pertinent to a stay request, the DeCourseys still fail to satisfy RAP 8.1(b)(3)'s requirement that they demonstrate both that their motion for discretionary review presents "debatable issues" ***and*** that the injury they will suffer in the absence of a stay outweighs the injury Lane Powell

[1] Because of the DeCourseys' recalcitrance, this case (and appeal) involve a large number of motions and rulings. Consistent with earlier submissions, Lane Powell has attached a list of the abbreviations used herein. Cites to "App.," pp. 1 –1215, are to the Appendix submitted on June 4, 2012; cites to "App.," pp. 1216 –1244, are to the documents attached hereto.

will suffer if a stay is imposed. In this regard, the DeCourseys' current motion merely repeats the arguments this Court previously rejected as insufficient. Moreover, to the extent circumstances have changed at all since this Court denied the DeCourseys' previous stay request, those changes further undermine the DeCourseys' argument.

II. STATEMENT OF FACTS

Lane Powell has set out the facts of this case in detail in other briefing before this Court and refers to that briefing for further detail. The facts most pertinent to the DeCourseys' Motion are summarized here.

A. The Registry Order

On August 3, 2011, Lane Powell filed and served an attorneys' lien in the Windermere lawsuit. App. 479–80. The lien claimed "not less than $384,881.66" and interest on that amount that was continuing to accrue:

> NOTICE IS HEREBY GIVEN that the undersigned attorneys, Lane Powell PC, claim a lien pursuant to RCW 60.40.010, for services rendered to Defendants and Third-Party Plaintiffs Mark and Carol DeCoursey and expenses incurred on their behalf in the amount of ***not less than*** $384,881.66. ***The lien is for amounts due to Lane Powell, together with interest***, for services performed in conjunction with an action before the trial and appellate courts.

Id. (emphasis added). The DeCourseys were aware that Lane Powell's lien included continuously accruing interest. App. 483; *see also* App. 7 ¶ 3.8. On November 3, 2011, without notice to Lane Powell and to convince the judgment debtor to pay them despite Lane Powell's lien, the

DeCourseys agreed to deposit $384,881.66—the amount due ***without interest***—into the Court Registry. App. 464–66; Mot. App. R.

Once Lane Powell discovered the deception, it moved for an order requiring them to deposit additional funds into the Court Registry to cover accruing interest. App. 461–74. The DeCourseys opposed. App. 507–60.

On December 21, 2011, the trial court granted the motion. It stated that "Defendants are directed to deposit an amount no less than $57,036.30 into the Registry of the Court immediately and in no event later than ten (10) days from the entry of this Order." App. 632. Thus, under the Registry Order, the DeCourseys were required to comply "no … later than" December 31, 2011. *Id.* They were aware of the Registry Order but took no steps to comply or stay the order, and never presented evidence of inability to comply. App. 873–78. Instead, they sought reconsideration. App. 633–74.

Lane Powell moved for contempt for the failure to comply with the Registry Order. App. 873–88. The DeCourseys opposed. App. 889–90.

B. The Discovery Orders

Lane Powell propounded discovery requests promptly and noted the DeCourseys' depositions based on the anticipated response time. App. 693–704, 706–08. Before they had even responded (and continuing in the months that ensued), the DeCourseys asked the trial court on numerous

occasions to hold that they were not required to produce "privileged" documents in response to Lane Powell's discovery requests. Each time, the trial court rejected their privilege (and other) objections.

- Discovery Protection Motion: The DeCourseys sought an order that their communications with Lane Powell on the Windermere lawsuit were privileged. App. 51–54. The trial court's 1st Privilege Order denied the DeCourseys' motion, rejecting their privilege and other objections. App. 180–81.
- Discovery Protection Reconsideration Motion: The DeCourseys raised the same arguments again, App. 389–458, and the trial court again rejected them in the 3rd Privilege Order, App. 459–60.
- Discovery Plan Motion: The DeCourseys again claimed privilege and that they should not have to produce documents they claimed Lane Powell had. App. 184, 187–89, 191. The trial court's 2nd Privilege Order denied this motion, again rejecting their position on privilege and other objections. App. 387–88.
- Compel Motion: In opposition to Lane Powell's Compel Motion, the DeCourseys' response largely repeated previously-rejected arguments. App. 838–66. The trial court's 4th Privilege Order granted the Compel Motion, directing the DeCourseys to "provide full and complete responses to Plaintiff's First Set of Interrogatories and Requests for Production." App. 871–72.
- Compel Reconsideration Motion: The DeCourseys sought reconsideration of the 4th Privilege Order. App. 898–908. The 5th Privilege Order disposed of the DeCourseys' motion without requesting a response from Lane Powell. App. 909–10. The trial court required the DeCourseys to "respond to discovery requests ***in full*** with evidence and materials in accordance with this Court's order of February 3, 2012 in accordance with CR 26(b) and ER 502." App. 910 (emphasis added). The trial court struck the DeCourseys' proposed language on the attorney-client privilege. *Id.*

Nonetheless, the DeCourseys still refused (and continue to refuse) to produce documents relevant to the issues in this matter based on the argument that the 5th Privilege Order actually granted them the relief they requested and permitted them to continue to withhold documents on the basis of privilege. App. 934–35. This conduct forced Lane Powell to postpone the

depositions and has brought the litigation to a screeching halt.

Lane Powell again moved the trial court for contempt and discovery sanctions. App. 911–21. They opposed using the same arguments that the trial court had previously rejected on numerous occasions and, this time, also took the position that the trial court's order on reconsideration had actually granted them the relief they sought. App. 936–1065.

C. The Trial Court Holds the DeCourseys in Contempt

The trial court granted Lane Powell's motions for contempt and sanctions based on the DeCourseys' failure to comply with the Registry and Discovery Orders. In the Contempt Order, the trial court found their continued refusal to comply to be "***without reasonable cause or justification*** and therefore [] ***willful and deliberate***." App. 895 (emphasis added). It found their conduct "has prejudiced Plaintiff's preparation of this case." *Id.* It ordered them to comply with the Registry and Discovery Orders by depositing $57,036.30 into the Court Registry and fully responding to discovery. *Id.* It also cautioned them that "further and more serious sanctions ... may follow" and ordered them to pay Lane Powell's fees. *Id.*

True to form, the DeCourseys refused to comply with the Contempt Order. Instead, they belatedly sought a stay from the trial court, App. 1143, and then sought a stay in this Court on May 2, 2012, App. 1216–25. Both motions were denied. App. 1226–28.

On June 6, 2012, and after the trial court denied the DeCourseys' motion for stay and this Court denied their first motion for stay, Lane Powell's counsel asked the DeCourseys about their intentions for compliance with the trial court's orders. App. 1229 ("[p]lease let us know quickly your intentions regarding compliance with the court's orders."). The DeCourseys did not respond. Counsel for Lane Powell again inquired as to the DeCourseys' intentions. App. 1230 ("[w]e have received no response from you regarding your intentions as to compliance with the court's orders. Again, please let us know ASAP what your intentions are with respect to this issue."). The DeCourseys again did not respond. Lane Powell has, accordingly, filed a third motion for contempt before the trial court seeking dismissal of the DeCourseys counterclaims and defenses for their persistent refusal to acknowledge and abide by the trial court's orders.

III. ARGUMENT

A. The DeCourseys' Motion Rests on the Same Arguments This Court has Already Rejected as Insufficient

In this Court's order rejecting the DeCourseys' request for a stay, this Court stated in pertinent part that "the DeCourseys have not . . . demonstrated that a stay is warranted." App. 1126. Thus, in order to obtain reconsideration of that ruling,[2] the obligation rested with the DeCourseys

[2] The DeCourseys' current request for a stay is either a request for reconsideration of the Court's earlier order or an objection to that order. It is unclear

to provide the Court with some new basis on which a stay was justified. They have not done so. Their current arguments are, at their core, a repeat of their previous (and previously rejected) arguments.

The essence of the DeCourseys' current argument relating to the privilege issues is that it was improper for the trial court to sanction them and hold them in contempt for failing to produce documents they withheld as privileged because the trial court had never previously held they had waived privilege. Mot. at 8–13. The DeCourseys' earlier stay motion rested on the same argument. App. 1218–19.

As for the Registry Order, the essence of the DeCourseys' current argument is that it was improper for the trial court to sanction them and hold them in contempt for failing to comply with the Registry Order when they had filed the Registry Reconsideration Motion on which the trial court had not yet ruled. Mot. at 13–15. They relied on the same argument in their earlier stay motion. App. 1219–20.

Similarly, the harms the DeCourseys argue they will suffer in their current Motion are the same harms they relied on previously. *Compare*

---

whether the RAP even permit motions for reconsideration for a denial of a stay, but even if they do, the DeCourseys make no attempt to meet that standard. *Cf.* RAP 12.4. They have not filed the motion within the 20 days permitted under the only rule addressing reconsideration, RAP 12.4(b). Nor do they satisfy the requirements for the content of such a motion. RAP 12.4(c). To the extent that their motion is, instead, an objection, they have not complied with the applicable RAP in this regard either. RAP 17.7 (providing for motion procedure and requiring motion must be served and filed "not later than 30 days after the ruling").

Mot. at 16 (DeCourseys will be forced to produce confidential and embarrassing documents without a protective order or face further sanctions) *with* App. 1218, 1221–23 (same); *compare* Mot. at 16–17 (arguing that Lane Powell will use the "threat of disclosure" "as a bludgeon to coerce a quick and inequitable settlement or dismissal") *with* App. 1219 (claiming that Lane Powell will use the disclosed material "to punish and abuse its former clients and to embarrass them or harass them into a settlement"). The Court rightly rejected these arguments in denying the DeCourseys' previous stay request and should do so again.

B. To the Extent Circumstances Have Changed Since the Court Denied the DeCourseys' Previous Stay Request, the Changes Further Undermine the DeCourseys' Request for a Stay

Only a few things have changed since the Court denied the DeCourseys' first stay request. None of those changes favor the DeCourseys.

The first change is that the trial court has denied the DeCourseys' stay motion. That motion rested on the same fundamental arguments as they make here—the Registry Reconsideration Motion excused their obligation to comply with the Registry Order and the Contempt Order was the first time the trial court held that the DeCourseys had waived privilege. App. 1175–77. The trial court firmly rejected the DeCourseys' arguments and held that the DeCourseys "do not provide any basis to stay the proceedings in this Court, nor does any basis or reason to stay this matter ap-

pear to the Court." App. 1128. This change obviously provides no support for the DeCourseys' request that this Court reconsider its denial of a stay.

Second, the DeCourseys have now posted a cash bond of $57,036.30—the amount they were required to deposit into the Court Registry last year. This development likewise does not assist the DeCourseys. The amount is insufficient on its face. The intent of a supersedeas bond is to protect the interests of the non-appealing party during the pendency of the appeal. *See, e.g.*, RAP 8.1(c)(1). In this case, as Lane Powell earlier described, App. 1161, a sufficient bond would need to include an additional amount for the interest that will accrue during the pendency of an anticipated appeal, which will delay the trial date in this matter, and the fees and costs Lane Powell will incur during such an appeal. The amount set by the trial court in the Registry Order, on the other hand, was designed to secure the interest on the lien amount as provided in the lien through the anticipated March 2013 trial. App. 469 n.4; App. 631–32. Thus, the DeCourseys still have not posted a sufficient bond. (And, of course, the bond does nothing to remedy the prejudice Lane Powell continues to suffer due to the DeCourseys' dilatory discovery tactics.)

Third, the trial court has made clear that further delay of this matter is unacceptable. In denying another of the DeCourseys' recent mo-

tions, the trial court stated: "The parties should take note that the trial date in this case is March 25, 2013 and that both parties have a responsibility to be prepared to commence trial on that date, both with respect to Plaintiff's claims and Defendants' Counterclaims." App. 1232. The trial court's ruling only further reinforces the prejudice being caused to Lane Powell by the DeCourseys ongoing refusal to comply with the trial court's Discovery Orders. Indeed, Lane Powell has been unable to make progress on discovery since virtually the outset of this case due to the DeCourseys' recalcitrance. *E.g.*, App. 919; App. 895.

C. Even if the Court Were to Reevaluate the DeCourseys' Request for a Stay, Their Request Should Still be Denied

1. Legal standard for a stay pending outcome of appeal

RAP 8.1(b)(3) and RAP 8.3 give appellate courts discretion to stay trial court decisions. RAP 8.1(b)(3) requires the Court to (1) consider whether the moving party can demonstrate debatable issues; and (2) compare the injury that would be suffered by the moving party in the absence of a stay with the injury that would be suffered by the non-moving party if a stay issued. RAP 8.1(b)(3) & 8.3; *see also Moreman v. Butcher*, 126 Wn.2d 36, 42, 891 P.2d 725, 729 (1995). Here, because the DeCourseys do not have an appeal of right, and instead seek discretionary review, the "debatable issues" they must show relate not to the merits of their appeal, but instead to the standard for granting discretionary review.

The DeCourseys' Motion fails to acknowledge or apply that distinction.

"Whether contempt is warranted ... is a matter within the sound discretion of the trial court; unless that discretion is abused, it should not be disturbed on appeal." *Moreman*, 126 Wn.2d at 40 (internal quotation marks omitted). This standard is a high one. "An abuse of discretion is present only if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons." *Id.* Similarly, this Court "review[s] a trial court's denial of a motion for reconsideration for abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *River House Dev. Inc. v. Integrus Architecture, P.S.*, 167 Wn. App. 221, 231, 272 P.2d 389 (2012). The same standard of review applies to the trial court's decision to permit or deny discovery, including its determinations on privilege issues. *Pappas v. Holloway*, 114 Wn.2d 198, 209, 787 P.2d 30 (1990). Particularly when combined with the standard for discretionary review, which is itself stringent (and properly so), the DeCourseys face an extremely high burden.

2. The DeCourseys' Motion for Discretionary Review does not present "debatable issues"

a. The Trial Court did not abuse its discretion with respect to the Discovery Orders, including holding the DeCourseys in contempt

The DeCourseys present no legitimate argument that their motion

for discretionary review of the Contempt Order based on their failure to comply with the Discovery Orders presents a "debatable issue." Trial courts have considerable discretion in fashioning an appropriate sanction for discovery violations. *See, e.g., Idahosa v. King Cnty.*, 113 Wn. App. 930, 939, 55 P.3d 657 (2002). A violation is willful or intentional if it is "without a reasonable excuse." *Carlson v. Lake Chelan Cmty. Hosp.*, 116 Wn. App. 718, 737, 75 P.3d 533 (2003). CR 37(b)(2) sets forth the sanctions available for failing to comply with a discovery order. It specifically permits the trial court's actions. *See* CR 37(b)(2)(D) (authorizing contempt for "the failure to obey any orders" and an award of fees).

As described above and in previous briefing, it is undisputed that the DeCourseys were aware of the Compel Order compelling discovery responses within ample time to comply with its mandate, never sought a stay, and were able to comply. Instead, they persistently claim certain materials are protected by the attorney-client privilege, even though the trial court (and Lane Powell) informed them that they waived the attorney-client privilege when they counterclaimed for malpractice.[3]

The DeCourseys' offer only two justifications for ignoring their

[3] Indeed, the trial court proceeded with restraint. In light of its "willful and deliberate" finding, the court could have imposed more serious sanctions (such as striking claims, defenses, or pleadings). Yet it ordered lesser sanctions despite the fact that, when Lane Powell moved for contempt, the trial court had entered *five* orders rejecting the privilege objections.

obligations under the Discovery Orders. Their initial claim (repeated from previous briefing) rests on their deliberate misreading of the trial court's 5th Privilege Order—that the trial court's failure to strike a passing reference to CR 26(b) and ER 502 entitles them to withhold any documents they unilaterally believe, without any authority, are privileged and, thus, that they are "in full compliance with" that order. Mot. at 10–11.

This claim flies in the face of the record in this matter, the plain language of the 5th Privilege Order, and the court's own rules. For these reasons, the trial court properly held that this excuse for noncompliance was "***without reasonable cause or justification*** and therefore [] ***willful and deliberate.***" App. 895 (emphasis added).

- Record: the record in this case is fundamentally inconsistent with the DeCourseys' self-serving reading of the trial court's 5th Privilege Order. The Discovery Plan and Discovery Protection Motions (and related motion for reconsideration) asked the trial court to find that the privilege protects them from disclosing certain documents. App. 44–45; 187–90. Those motions were denied without qualification. App. 180–81, 387–88, 459–60. And if that was not enough, the trial court's 4th Privilege Order directed the DeCourseys to "provide full and complete responses" to the discovery requests. App. 872. If the trial court wanted to grant the relief the DeCourseys repeatedly sought, it would have done so at one of the many times the issue was raised.
- 5th Privilege Order: The plain language of the 5th Privilege Order is likewise fundamentally at odds with the DeCourseys' interpretation. The trial court used the DeCourseys' proposed order, but struck their language that the Compel Order was "VACATED." App. 910. The trial court likewise struck the language stating that Lane Powell had provided no authority to support a universal waiver of the privilege concerning the Windermere lawsuit. *Id.* In ordering the DeCourseys to "respond to the discovery requests in full with evidence and materials" the trial court likewise inserted "in accordance with this Court's [4th Privilege Order]," and further

struck the language "that are not privileged." *Id.* The DeCourseys make no attempt to reconcile their interpretation with the trial court's alterations of their proposed order. Indeed, the DeCourseys these alterations and instead misrepresent Lane Powell's argument by claiming that the struck language to which Lane Powell referred was the passing reference to ER 502 and CR 26(b) that the trial court did not strike. Mot. at 12.[4]

- Court Rules: Finally, the DeCourseys have never yet been able to reconcile their interpretation of the 5th Privilege Order with the trial court's own rules. They have not because they cannot. The fact is that the trial court could not have granted the DeCourseys the relief they requested in their Compel Reconsideration Motion because it resolved that motion without requesting a response from Lane Powell. The DeCourseys do not deny that the court's rules would prohibit the court from granting them the relief they requested. Nor can they. The rule is clear and states: "No response to a motion for reconsideration shall be filed unless requested by the court. No motion for reconsideration will be granted without such a request." KCLCR 59(b). It is telling that the DeCourseys have never addressed this issue in attempting to justify their interpretation of the 5th Privilege Order.

For the first time in their current Motion, the DeCourseys offer another excuse for their failure to comply with the Discovery Orders. They now claim that language in the 2nd Privilege Order stating that "civil rules will govern discovery" somehow excused their compliance with the Discovery Orders, including the ***later*** 4th Privilege Order. Mot. at 10, 12. This new argument is just as specious as their "interpretation" of the 5th

[4] The DeCourseys likewise accuse Lane Powell of "obtain[ing] a contempt finding against DeCourseys by misquoting and mischaracterizing the orders for which the DeCourseys were subsequently found in contempt." Mot. at 12. The DeCourseys moved the trial court for CR 11 sanctions based on this argument, App. 1233–37, and the trial court denied that motion, again confirming that "the inclusion or omission of those specific words [referring to the reference to CR 26(b) and ER 502] does not alter the duties of Defendants under [the 4th Privilege Order]." App. 1231. Accordingly, the trial court further again confirmed that "the Defendants must comply with the [4th Privilege Order], and neither that Order, nor the effect of that Order is altered by the inclusion of the reference to CR26 and ER 502 in the [5th Privilege Order]." *Id.*

Privilege Order. First, the DeCourseys neglect to inform the Court that the 2nd Privilege Order ***denied*** the DeCourseys' request for a discovery plan that incorporated the DeCourseys' privilege arguments. App. 387; *see also* App. 184, 187–89 (motion raising privilege issue); App. 64–66 (proposed order). Second, the DeCourseys take the trial court's language completely out of context to give it a meaning it does not have. The trial court actually stated: "Neither party seeks an adjustment to the case schedule, and therefore the core schedule and civil rules will govern discovery." App. 388. In sum, the DeCourseys' mischaracterization of the 2nd Privilege Order is no more helpful to their cause as their deliberate misinterpretation of the 5th Privilege Order.

Even if it was timely appealed, the DeCourseys likewise cannot show a "debatable issue" as to whether they meet the standard for discretionary review of the 1st Privilege Order. The DeCourseys complain that the trial court did not explicitly expound on the standard for waiver of privilege in the malpractice context when it denied the Discovery Protection Motion. Mot. at 7. They offer no support for the notion that the trial court was required to do any such thing, let alone that it was an abuse of discretion to simply deny the motion. Indeed, even the DeCourseys do not explain how this case does not meet the standard they suggest, they only complain that the trial court did not discuss the test explicitly and then

claim, without elaboration, that debatable issues exist. Mot. at 7–8.

Further, it is abundantly clear that the standard they discuss is satisfied here. First, the waiver was "the result of some affirmative act" by the DeCourseys, here filing counterclaims against Lane Powell. Mot. at 7. Second, through the sheer breadth of their claims against Lane Powell, the DeCourseys have put all of Lane Powell's representation of the DeCourseys in the Windermere lawsuit at issue. *Id.* The trial court was familiar with the DeCourseys' extensive claims against Lane Powell (App. 11–42) and did not abuse its discretion in relying on the scope of those claims to conclude that privilege had been waived. Indeed, many allegations specifically reference alleged failures by Lane Powell that occurred "throughout" the representation (*e.g.*, App. 19, 23–24, 28, 35–36), including alleged failures from the outset of the representation (*e.g.*, App. 21). Thus, applying the privilege as demanded by the DeCourseys would deprive Lane Powell of information vital to its defense. Mot. at 7.[5]

b. The Trial Court did not abuse its discretion with respect to the Registry Order, including holding the DeCourseys in contempt

The DeCourseys likewise present no legitimate argument that their

[5] In this regard, the DeCourseys' protestations that Lane Powell has the information at issue ring hollow. Mot. at 17. The DeCourseys, of course, hold the privilege (not Lane Powell) and their continued (albeit improper) assertion of the privilege needlessly complicates Lane Powell's use of documents in its possession in this litigation. *See* App. 33 (claiming the Lane Powell is not even entitled to provide "privileged" information to its own counsel).

motion for discretionary review of the Contempt Order based on their failure to comply with the Registry Order presents a "debatable issue." Indeed, they offer only two arguments: first, that filing the Registry Reconsideration Motion excused them from compliance; and second, their belief that the Registry Order was wrong so they have no obligation to comply. Neither argument presents a debatable issue for discretionary review.

Despite repeated opportunities, the DeCourseys have never presented any authority for the proposition that filing a motion for reconsideration stays a court order. Lane Powell is aware of no such authority. The DeCourseys knew the procedure to stay an order (indeed, they used it here, albeit belatedly, App. 1143). In all likelihood, they did not seek a stay because they knew they could not meet standard, just as the trial court later found. App. 1227–28. They cannot present a debatable issue that the Contempt Order should be taken up on discretionary review when they provide no case or rule that supports the notion that their reason for ignoring the Registry Order was proper and insulated them from contempt.

As for the trial court's denial of the Registry Reconsideration Motion, the DeCourseys do not even attempt to argue how their motion for discretionary review presents debatable issues showing the trial court abused its discretion in denying the motion such that the standard for discretionary review is satisfied. They complain about the timing of the Reg-

istry Reconsideration Order, but do not even discuss CR 59 or its requirements, explain how their motion satisfied these requirements, let alone explain how the trial court abused its discretion.

Finally, even assuming they have timely appealed the Registry Order, their arguments on it likewise do not present a debatable issue for purposes of discretionary review. As an initial matter, despite the DeCourseys' inaccurate characterization, the interest at issue is not "prejudgment interest" but rather interest the DeCourseys agreed to pay to Lane Powell as a part of the fee agreement. App. 35 ¶ 231. They complain that the lien amount is not sufficiently specific, but disregard the clear fact that the amount can (and was) calculated with exact specificity just as any interest calculation can be. App. 469 n.4; App. 631–32. Their complaints that the trial court was wrong in ordering the DeCourseys to pay this interest into the Court Registry disregard the nature of an attorneys' lien. The lien attached to the judgment by operation of law. RCW 60.40.010(1). If the DeCourseys wanted the benefit of obtaining the undisputed portion of the judgment from Windermere before their dispute with Lane Powell was resolved, they had an obligation to set aside a sufficient amount to fully secure Lane Powell's lien. The trial court's decision to remedy the DeCourseys' deceptive conduct with respect to both Lane Powell and the Court Commissioner by requiring the DeCourseys to pay

into the Court Registry the amount necessary to protect Lane Powell's lien interests through the anticipated trial date was not error, let alone the sort of error for which discretionary review should be granted.

3. The DeCourseys Cannot Show that the Balance of the Harms Favors a Stay

Under RAP 8.1(b)(3), the DeCourseys must show that the injury they will suffer without a stay outweighs those Lane Powell will suffer if a stay is imposed. They cannot meet this showing even if all the orders were timely appealed.

The DeCourseys' injury argument rests on the notion that once their "secret and embarrassing confidences" are produced, they will have no means to re-secure them. Mot. at 16. They disregard that these are already matters that were disclosed to Lane Powell and that they put these matters at issue by suing Lane Powell. Further, the DeCourseys ignore a critical distinction—they have ***never sought a protective order*** putting restrictions on the use of any "secret or embarrassing materials"; instead, they have refused to disclose them at all. Considering that the only injury they identify could be remedied by a process they have never bothered to use, their claims of injury ring hollow.

The DeCourseys have likewise failed to identify any cognizable injury from being required to place sufficient funds into the Court Registry to protect Lane Powell's lien interests. Indeed, their voluntary payment of

a supersedeas bond with cash in the full amount required by the Registry Order demonstrates that there is no such injury. App. 1238–44.

On the other hand, the ongoing injury to Lane Powell due to the DeCourseys' disregard of the Court's orders, most particularly the Discovery Orders, is significant. The trial court held that the DeCourseys' refusal to comply with these orders "has ***prejudiced Plaintiff's preparation of this case***." App. 895 (emphasis added). Indeed, Lane Powell has been waiting to receive full discovery and depose the DeCourseys for months. App. 681–82. Furthermore, Lane Powell has been unable to move this case forward on its claims and to defend the DeCourseys' counterclaims. App. 684, 686. The fact that Lane Powell is a law firm has nothing to do with this discovery dispute. It is well-settled a party cannot withhold discovery because the other party may have it. Nor, as described above, does the bond protect Lane Powell's interests because the bond amount does not account for the additional delay and cost of the anticipated appeal. *See Seventh Elect Church in Israel v. Rogers*, 34 Wn. App. 105, 109, 660 P.2d 280, 284 (1983) (finding trial court did not err in setting bond in an amount representing damages caused by delay in seeking appeal). Particularly in light of the trial court's recent admonition that the parties be ready for the upcoming trial, App. 1232, it is all the more important that the DeCourseys pattern of delay and obstruction cease now.

IV. CONCLUSION

Lane Powell respectfully requests that this Court deny the De-Courseys' second request to stay this matter and further delay the resolution of this case.

RESPECTFULLY SUBMITTED this 9th day of July, 2012.

McNAUL EBEL NAWROT & HELGREN PLLC

By: _____

Robert M. Sulkin, WSBA No. 15425
Malaika M. Eaton, WSBA No. 32837
Hayley A. Montgomery, WSBA No. 43339

600 University Street, Suite 2700
Seattle, WA 98101-2380
Telephone (206) 467-1816
rsulkin@mcnaul.com
meaton@mcnaul.com
hmontgomery@mcnaul.com

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on July 9, 2012, I caused a copy of the foregoing **Lane Powell PC's Answer to DeCourseys' Second Motion for Stay of Orders** to be served by electronic mail (per agreement) to:

Michele Earl-Hubbard
Allied Law Group LLC
6351 Seaview Avenue Northwest
P.O. Box 33744
Seattle, Washington 98133/98107
michele@alliedlawgroup.com
info@alliedlawgroup.com
Attorney for Petitioners Mark and Carol DeCoursey

DATED this 9th day of July, 2012, at Seattle, Washington.

By: Robin M. Lindsey
Robin M. Lindsey, Legal Assistant

EXHIBITS

ALPHABETICAL LIST OF ABBREVIATIONS

1st Privilege Order: Order on Defendants' Motion for Discovery Protection Pursuant to CR 26(c) and Sanctions Under CR 26(i), dated November 17, 2011

2nd Privilege Order: Order on Defendants' Amended Motion for CR 26(f) Discovery Plan, dated December 12, 2011

3rd Privilege Order: Order Denying Motion for Reconsideration, dated December 30, 2011

4th Privilege Order: Order on Plaintiff's Motion to Compel Responses to Plaintiff's First Discovery Requests, dated February 3, 2012

5th Privilege Order: Order on Motion for Reconsideration of Motion to Compel, dated February 29, 2012

Compel Motion: Plaintiff's Motion to Compel Defendants' Discovery Responses to First Discovery Requests, dated January 24, 2012

Compel Reconsideration Motion: DeCourseys' Corrected Motion for Reconsideration of Order on Motion to Compel, dated February 13, 2012

Contempt Order: Order on Motions to Compel and for Contempt, dated April 25, 2012

Discovery Orders: 1st Privilege Order, 2nd Privilege Order, 3rd Privilege Order, 4th Privilege Order, and 5th Privilege Order

Discovery Plan Motion: Amended Motion for Discovery Plan Under CR 26(f) and Subjoined Declaration

Discovery Protection Motion: Defendants' Motion for Discovery Protection Under CR 26(c) and Sanctions Under CR 26(i) and Subjoined Declaration

Discovery Protection Reconsideration Motion: Motion for Reconsideration and Clarification of Order Denying Discovery Protection Under CR 26(c) and Sanctions under CR 11

Motion: Motion for Discretionary Review

Registry Order: Order on Plaintiff's Motion to Require Deposit of Funds Into Court Registry, dated December 21, 2011

Registry Reconsideration Motion: Motion to Reconsider Court's Order Requiring Deposit of Additional Funds, dated January 2, 2012

Registry Reconsideration Order: Order on Defendants' Motion to Reconsider the Court's Order to Deposit Funds, dated May 2, 2012

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

MARK DeCOURSEY and CAROL DeCOURSEY, Defendants/Petitioners v. LANE POWELL, PC Plaintiff/Respondent	NO. **EMERGENCY MOTION FOR STAY** On Appeal From King County Superior Court (Case No. 11-2-34596-3 Sea)

I. IDENTITY OF MOVING PARTY

Mark and Carol DeCoursey, Petitioners, (hereinafter "DeCourseys") asks the Court for the relief designated in Part II below.

II. STATEMENT OF RELIEF SOUGHT

The DeCourseys ask the Court to grant a Stay of the trial court's Order dated April 27, 2012, attached hereto as Exhibit A, to allow the DeCourseys to seek discretionary review of such Order from this Court.

III. FACTS RELEVANT TO MOTION

The DeCourseys have been sued by their former attorneys, Lane Powell ("Respondent") which alleges a right to more than $755,170.96 of a $1,211,038.18 judgment in a real estate lawsuit as alleged attorney's fees and costs. Lane Powell claims this amount although it is many times the $100,000 quoted to DeCourseys when they signed the retainer agreement as the estimated cost of the litigation. It is also $173,626.87 more than the trial court, this Court, and the Supreme Court found to be reasonable fees and costs throughout the representation in connection with fee motions.

Despite abandoning ready awards, failing to pursue contractually obligatory appeals, and failing to present certain fee and cost requests to the trial and appellate courts for reimbursement, Lane Powell now seeks to recover its full invoice from DeCourseys plus interest. DeCourseys terminated Lane Powell and hired other counsel to resolve the original real estate matter following a remand ordered by the appellate court, and Lane Powell filed a lien against the judgment for $384,881.66. DeCourseys and the judgment debtors (Windermere Real Estate, *et al.*) in that underlying

case lodged the full amount of such lien in the Court Registry for the King County Superior Court, and DeCourseys sought to negotiate with Lane Powell. In response, Lane Powell sued and threatened to "pay $800,000 in fees in this suit to recover $300,000" [sic]. DeCourseys counter-sued for breach of contract.

DeCourseys have since been operating *pro se* against aggressive counsel. The Respondent has sought **all** communications the DeCourseys had with anyone about their real estate lawsuit, including specifically privileged communications, including confidential and highly personal communications the DeCourseys had with Respondent and confidences shared with Respondent as their attorneys throughout the four years of their interactions. On April 27, 2012, the trial court issued an Order declaring the attorney client privilege universally waived on all communications between DeCourseys and Respondent,[1] and ordering all such documents to be provided to Respondent by 4:00 p.m. this Thursday, May 3, 2012 (even though Respondent already has them all). The Court had earlier denied a protective order to DeCourseys so that such disclosure

[1] DeCourseys do not object to providing documents relevant to the contract and fee dispute, and Lane Powell's performance thereunder. In accordance with ER 502, which the Court cited in the March 2, 2012 Order, waiver of privilege is subject by subject, in contrast to Lane Powell's discovery request and the April 27 Order, which require a waiver of **all** privileged material, regardless of subject.

will come with no restrictions on the Respondent, who may then use the material to punish and abuse its former clients and to embarrass them or harass them into a settlement.

In the instant Order, the Court also found DeCourseys in contempt for not earlier producing records that they had no clue until now the trial court expected them to provide; they are ordered to pay attorney's fees and costs to their opponents and face other sanctions if they do not provide these records by 4:00 p.m. Thursday, May 3.

The Court's Order of April 27, 2012 contains no finding of fact supporting the involuntary and universal waiver of DeCourseys' privilege. This Court has nothing to review on the subject. Earlier Orders are silent on the subject of privilege, but the March 2, 2012 Order (the next most recent on the subject of discovery), requires DeCourseys to produce discovery materials "in accordance with CR 26(b) and ER 502." CR 26(b) states, "Parties may obtain discovery regarding any matter, not privileged." Then comes the order of April 27 waiving DeCourseys' privilege and sanctioning DeCourseys for not producing the privileged materials previously. This is a judicial track impossible for a litigant to follow, and clearly an abuse of discretion.

The April 27, 2012 Order also ordered the DeCourseys to lodge an additional $57,036.30 in pre-judgment interest in the Court Registry, not

identified in the lien, in the event the right to the lien amount was proven in the future. The DeCourseys had timely filed a Motion for Reconsideration of the Court's Order in January 2012 related to the lodging of such funds, and the Court has yet to grant or deny that motion. Nonetheless, the April 27, 2012 Order holds the DeCourseys in contempt and orders them to pay fees and fines for not earlier lodging such interest, and orders them to lodge these funds by 4:00 p.m. this Thursday or face further sanction. The DeCourseys maintain that the December 21, 2011 Order requiring the lodging of interest—that the Respondent has yet to show it is even entitled to receive—is inappropriate and unjustified. The trial court has yet to rule on its Motion for Reconsideration of such ruling, making the sanction and award of fees inappropriate and an abuse of discretion.

The DeCourseys received the trial court's Order in an unsigned fashion by email on Thursday, April 26, 2012. The signed order was not filed to the docket until Tuesday, May 1, 2012. In an abundance of caution, DeCourseys filed a Motion to Shorten Time and a Motion for Stay in the trial court on Monday, April 30, 2012 and served opposing counsel with a copy. See Declaration of Carol DeCoursey at ¶3 and **Exhibits A, B** and **C**, attached hereto. The DeCoursey filed their Notice for Discretionary Review directed to this Court with the Superior Court on

Tuesday, May 1, 2012, paid the $280 filing fee, and served the Notice on opposing counsel. See Carol DeCourseys' Decl, at ¶5 and **Exhibit E**.

To date, the trial court has yet to rule on the Motion for Stay of Case or the Motion to Shorten Briefing Time. At 4:00 p.m. on Thursday, May 3, 2012, the DeCourseys are obligated to disclose years of confidential highly personal communications to their opponents with no protective order or restriction on their use or dissemination, and to lodge $57,036.30 of their own money with the Court Registry, and in the near future to be forced to pay an undetermined amount of fees and costs to their opponents as a sanction for not having done something – disclosed those records or lodge that money – they contend they should not legally have been required to do and for which they had not been legally bound to do at any time prior to the April 27, 2012 Order, based on the Court's past rulings and the lack of a decision on their Motion for Reconsideration.

On January 3, 2012, DeCourseys requested ADA accommodation with the Superior Court in accordance with the instructions provided by Court personnel. The court took no action on that Request and did not acknowledge it despite multiple nudges and queries by DeCourseys, including filing the material with the Clerk under a GR 22 coversheet, in accordance with further (and improper) instructions from Court personnel. Finally on April 10, 2012, the Assistant Presiding Judge, Ms. Palmer

Robinson, wrote a letter to DeCourseys substantially denying their request.

Order of April 27 included Judge Palmer Robinson's April 10 letter to DeCourseys. The language in the Order suggests it was issued in retaliation for DeCourseys' Request: it states, "... having considered the ADA accommodation request ...," and then strips DeCourseys of attorney client privilege, requires the production of thousands of privileged documents, imposes sanctions, and threatens to dismiss DeCourseys' claims. The Court's response to DeCourseys' ADAAA Request was out of compliance with GR 33, the Federal *Americans with Disabilities Act Amendments Act*, and the Federal *Civil Rights Act* of 1964.

IV. GROUNDS FOR RELIEF AND ARGUMENT

Rules on Appeal 17.4(b) allows "in an emergency, a person may request expedited consideration of a motion." Pursuant to RAP 17.4(b), the DeCourseys attach the Declaration of Carol DeCoursey confirming that this Motion for Stay was hand served to opposing counsel on May 2 by 9:00 a.m.

The above facts explain why the Motion should be considered on an emergency basis. If this Motion for Stay is not considered on an emergency basis, it cannot be decided before the date the Order commands performance and the DeCourseys risk being held in further contempt and

subject to further sanction, including having their claims dismissed or judgment entered against them. The DeCourseys filed an appeal within one day of receiving a signed copy of the order and immediately sought a stay in the trial court. The trial court has yet to decide that motion, and the DeCourseys' Motion for Discretionary Review is not due for 15 days after filing of their Notice. This Court should grant this Emergency motion for Stay to give the parties the breathing room needed to brief the issue of discretionary review and for this Court to determine whether it should accept discretionary review.

The April 27, 2012 Order came after months of waiting for a decision on a Motion for Reconsideration, which never came, and with no prior indication that the Court intended DeCourseys' privilege had been waived and privileged communications were to be disclosed.

Given the trial courts' own delay in handling these matters, there is no harm or prejudice to the Respondent while waiting a few more weeks for this Court to decide whether an appeal is appropriate, and significant irreparable harm to the DeCourseys if the stay is not granted and they are forced to comply with the Order.

V. CONCLUSION

For the foregoing reason, the Court of Appeals should grant the Emergency Motion for Stay and stay the April 27, 2012 Order, pending a

determination of the Motion for Discretionary Review, and, if accepted, pending the conclusion of the appeal.

Dated this 2nd day of May, 2012.

Submitted by:

Carol DeCoursey, pro se

Mark H. DeCoursey, pro se

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on May 2, 2012, I delivered a copy of the foregoing Emergency Motion for Stay by hand delivery to the following:

Robert Sulkin
McNaul Ebel Nawrot & Helgren PLLC
One Union Square
600 University Street, Suite 2700
Seattle, Washington 98101-3143

Dated this 2nd day of May, 2012, at Redmond, Washington.

Carol DeCoursey

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

May 18, 2012

Michele Lynn Earl-Hubbard
Allied Law Group LLC
PO Box 33744
Seattle, WA, 98133-0744
Michele@alliedlawgroup.com

Carol Decoursey Mark Decoursey
8209 172nd Ave NE
Redmond, WA, 98052

Malaika Marie Eaton, Robert M. Sulkin
McNaul Ebel Nawrot & Helgren PLLC
600 University St Ste 2700
Seattle, WA, 98101-3143
meaton@mcnaul.com

CASE #: 68671-2-I
Lane Powell, PC, Res. v. Mark Decoursey and Carol Decoursey, Pet.

Counsel:
The following notation ruling by Commissioner Mary Neel of the Court was entered on May 17, 2012:

Petitioner DeCoursey's motion for extension of time to May 25, 2012 to file their motion for discretionary review is granted. DeCoursey's shall confer with opposing counsel and note the motion for discretionary review at 9:30 a.m. on a Friday morning commissioner's calendar. In their motion the DeCourseys shall address the scope of review, as it appears that their notice of discretionary review is untimely as to the November 2011 and December 2011 orders listed in the notice. Their request to file an overlength motion is denied.
The DeCourseys motion for stay pending review of the April 27, 2012 trial court order on Lane Powell's motion to compel and for contempt is denied at this time. The DeCoursey's have a motion for stay pending in the trial court. Moreover, the DeCoursey's have not identified the Rule of Appellate Procedure under which they seek a stay, demonstrated that a stay is warranted, or taken steps to stay enforcement of the trial court order by posting supersedeas. The temporary stay entered by this court on May 2, 2012 is lifted.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk
twg

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

LANE POWELL PC, etc.,

Plaintiff,

v.

MARK DECOURSEY and CAROL DECOURSEY, etc.,

Defendants

NO. 11-2-34596-3 SEA

ORDER RE: DEFENDANTS' MOTION TO STAY

(CLERK'S ACTION REQUIRED)

On Friday June 1, 2012 this Court received a copy of the Court of Appeals' notation ruling denying Defendants' motion to stay filed in that Court. The motion to stay filed in this Court has not been addressed. The motion in this Court was filed on April 30, 2012, and noted for Hearing on May 1, 2012. Plaintiff's Response was filed on May 1, and Defendants' Reply was filed on May 2, 2012. Defendants also filed a motion to shorten the briefing time on the motion to stay, which motion was scheduled to be considered on May 1, 2012. The motion to shorten time is DENIED as moot. All briefs relating to the motion to stay have been filed.

Judge Richard D. Eadie
King County Superior Court
516 Third Avenue
Seattle, WA 98104
(206)296-9095

ORIGINAL

The Court of Appeals issued a Stay Order on May 2, 2012, before a ruling was issued on the motion for stay filed in this Court. Since the Court of Appeals has now lifted its Stay Order, this Court will address the motions outstanding in this Court, and will do so without oral argument, any requests for which are DENIED.

In their Reply with respect to their motion to stay, Defendants argue that this Court's December 21, 2011 Order to deposit funds into the court registry is in abeyance because their motion for reconsideration has not been ruled on. While this Court does not agree that the December 21, 2011 Order is in abeyance, Defendants' Motion for Reconsideration of that Order is hereby DENIED, and Defendants' are further ORDERED to comply with all the terms of the December 21, 2011 Order forthwith, reserving any claims for damages or terms for non-compliance with that Order that Plaintiff may file.

Defendants' Motion to Stay Pending Appellate Review is also DENIED. Defendants do not provide any legal basis to stay the proceedings in this Court, nor does any basis or reason to stay this matter appear to the Court.

DATED this 4th day of ~~MAY~~ JUNE, 2012

Richard D Eadie

RICHARD D. EADIE, JUDGE

Judge Richard D. Eadie
King County Superior Court
516 Third Avenue
Seattle, WA 98104
(206)296-9095

Robin Lindsey

From:	Malaika Eaton
Sent:	Wednesday, June 06, 2012 11:38 AM
To:	Mark DeCoursey; Carol DeCoursey
Cc:	Robin Lindsey
Subject:	FW: hearing date for Motion for Discretionary Review in DeCoursey appeal
Attachments:	12-0604 ORDER DENY MOTSTY ETC.pdf
Categories:	436.016 - Lane Powell PC/ Carol and Mark DeCoursey

Mr. and Mrs. DeCoursey -- Attached is an order from the trial court that we just received denying your motion to stay. As indicated below, Ms. Earl-Hubbard asked that we send it directly to you. Please let us know quickly your intentions regarding compliance with the court's orders.

Thank you,

Malaika Eaton

APPENDIX 1229

Malaika Eaton

From: Malaika Eaton
Sent: Friday, June 08, 2012 8:47 AM
To: Malaika Eaton; 'Mark DeCoursey'; 'Carol DeCoursey'
Cc: Robin Lindsey
Subject: RE: hearing date for Motion for Discretionary Review in DeCoursey appeal

Mr. and Mrs. DeCoursey:

We have received no response from you regarding your intentions as to compliance with the court's orders. Again, please let us know ASAP what your intentions are with respect to this issue.

Malaika Eaton

From: Malaika Eaton
Sent: Wednesday, June 06, 2012 11:38 AM
To: 'Mark DeCoursey'; Carol DeCoursey
Cc: Robin Lindsey
Subject: FW: hearing date for Motion for Discretionary Review in DeCoursey appeal

Mr. and Mrs. DeCoursey -- Attached is an order from the trial court that we just received denying your motion to stay. As indicated below, Ms. Earl-Hubbard asked that we send it directly to you. Please let us know quickly your intentions regarding compliance with the court's orders.

Thank you,

Malaika Eaton

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

LANE POWELL, PC,

Plaintiff,

v.

MARK AND CAROL DeCOURSEY,

Defendants

NO. 11-2-34596-3 SEA

ORDER ON DEFENDANTS' MOTION FOR CR 11 SANCTIONS

(CLERK'S ACTION REQUIRED)

This matter is before the Court on Defendants' Motion to impose sanctions against Plaintiff and its attorneys. Defendants charge Plaintiff with misrepresenting the content of this Court's Order dated February 29, 2012 (filed March 2, 2012, hereafter referred to as Dkt. 98), by quoting that Order in a subsequent pleading, but omitting the words "...in accordance with CR26(b) and ER 502." However the inclusion or omission of those specific words does not alter the duties of Defendants under this Court's Order of February 3, 2012. Therefore the Defendants must comply with the February 3, 2012 Order, and neither that Order, nor the effect of that Order is altered by the inclusion of the reference to CR26 and ER 502 in the Order filed under Dkt. 98.

Defendants' Motion for Sanctions is DENIED.

However, Defendants are correct that Plaintiff's citation to the February 29 Order should not have concluded the quotation from that Order with a period, unless it either included the CR26 and ER 502 language, or replaced that language with an ellipsis.

Judge Richard D. Eadie
King County Superior Court
516 Third Avenue
Seattle, WA 98104
(206)296-9095

Attention to that detail would have saved us all the time and effort directed to this motion for sanctions. Further, Plaintiff did not include a proposed Order with their response to Defendants' motion as required by LCR 7(b)(5)(C), and in the future proposed orders shall be provided in accordance with that rule, and further it is good practice, and may become a local rule, for the moving party to provide a form of order with their Reply that reflects any change in the relief requested and lists, when required, all the documents filed with the motion, response and reply.

The Parties should take note that the trial date in this case is March 25, 2013 and that both parties have a responsibility to be prepared to commence trial on that date, both with respect to Plaintiff's claims and Defendants' Counterclaims.

DATED this 3 day of JULY, 2012

/s/
RICHARD D. EADIE, JUDGE

Judge Richard D. Eadie
King County Superior Court
516 Third Avenue
Seattle, WA 98104
(206)296-9095

Honorable Judge Richard D. Eadie
Hearing Date: July 3, 2012
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

MOTION FOR CR 11 SANCTIONS

1. RELIEF REQUESTED

DeCourseys ask this Court to sanction Lane Powell PC's counsel, McNaul Ebel Nawrot & Helgren PLLC ("McNaul"), for violation of Civil Rule 11, the Bar oath of the McNaul attorneys, and associated clauses of the RPC for deliberate misrepresentations to this court. DeCourseys ask this Court to declare McNaul in violation of CR 11 and order McNaul to donate the amount of the fees and costs billed for that motion ($3,754, as shown by the Declaration of Malaika M. Eaton, Ex. A, to be seen here at **Exhibit A**) to the local charity for the homeless, SHARE/WHEEL, and to award to DeCourseys the attorney fees they incurred in consequence of the CR 11 violation.

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

2. STATEMENT OF FACTS

On February 29, 2012, this Court signed an order in this case. **Exhibit B.** That Order appears on the docket with the date March 2, 2012 and states in part:

> And therefore this Court ORDERS: That DeCourseys must respond to discovery requests in full with evidence and materials in accordance with this Court's order of 2/3/2012 **in accordance with CR 26(b) and ER 502.** [Emphasis added.]

On March 8, 2012, McNaul signed a Motion filed in this Court allegedly quoting that Order. **Appendix C.** Over the signature of partner attorneys with that firm, McNaul alleged:

> In that Order, the Court required the DeCourseys to "respond to discovery requests in full with evidence and materials in accordance with this Court's order of February 3, 2012."

McNaul ended the truncated quote with a period, though the Court ended the sentence with seven words of a qualifying and limiting phrase. That is, in citing to the March 2 Order, McNaul truncated the last seven (7) words and misrepresented the Order.

On March 9, DeCourseys emailed Lane Powell's attorneys of record at McNaul and informed them of the altered wording. **Appendix D.**

McNaul did not withdraw or issue a correction, but allowed this court proceed on the misrepresentation.[1]

3. STATEMENT OF ISSUES

Does this Court require the lawyers appearing before it to tell the truth, as required by CR 11?

Are lawyers above the law?

---

[1] Later, despite DeCourseys' notification, McNaul used the same misquote to the Court of Appeals. **Appendix E** (page 9).

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

4. EVIDENCE RELIED UPON

Subjoined declaration of Mark DeCoursey and its exhibits.

The pleadings for this case on file with the Court.

5. AUTHORITY

Civil Rule 11 states in part:

> The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that **to the best of the party's or attorney's knowledge**, information, and belief, formed after an inquiry reasonable under the circumstances: (1) **it is well grounded in fact**; ... If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, **may impose** upon the person who signed it, a represented party, or both, **an appropriate sanction**, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee. [Emphasis added.]

McNaul altered the Order's wording to provide support for its argument that DeCourseys had not complied with the Court's Order and the Order as worded did not provide sufficient foundation for such argument.

If those words hold *no* additional meaning, McNaul had no purpose in mirepresenting the Order and should have included those words pursuant to CR 11.

If those words *do* have additional meaning, McNaul misrepresented the meaning of the Order in addition to the text.

Since DeCourseys notified McNaul of the error and McNaul did not move to correct or withdraw, McNaul must be considered in knowing and deliberate violation of CR 11, and subject to its sanctions.[2]

[2] It is of interest to note that this lawsuit was filed in violation of CR 11. On December 5,

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

6. ORDER

A proposed order accompanies this Motion.

DATED this 22 day of June, 2012

Carol DeCoursey

Carol DeCoursey

Pro se

Mark DeCoursey

Mark DeCoursey

Pro se

2012, Lane Powell wrote to DeCourseys promising, "First, we will forbear on demanding payment on the balance of the amount owed until payment on the judgment or settlement with Windermere." **Exhibit F.** This promise was later incorporated in an agreement between the parties signed on December 30, 2008: "Lane Powell PC agrees to forbear for a reasonable time on collecting the balance and will assist you ..." But Lane Powell did not forbear. Lane Powell filed this lawsuit against DeCourseys on October 5, 2011, four weeks before the final judgment in the underlying Windermere lawsuit. **Exhibit G.**

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:

1. **Exhibit A** is a true and fair extract of a declaration filed to this court by McNaul concerning the fees billed to Lane Powell for the offending motion of March 8, 2012.
2. **Exhibit B** is a true and fair copy of an order issued by this court signed on February 29, 2012 and filed on March 2, 2012.
3. **Exhibit C** is a true and fair extract of the offending motion filed by Lane Powell's attorneys of record at McNaul Ebel Nawrot & Helgren PLLC.
4. **Exhibit D** is a true and fair copy of an email sent to Lane Powell's attorneys of record at McNaul by DeCourseys on March 9, 2012.
5. **Exhibit E** is a true and fair extract of McNaul's argument to the Court of Appeals on May 9, 2012.
6. **Exhibit F** is a true and fair copy of Lane Powell's letter to DeCourseys dated December 10, 2008.
7. **Exhibit G** is a true and fair copy of an agreement signed on December 30, 2008 by Lane Powell and DeCourseys.

DATED this 22 day of June, 2012

Mark DeCoursey

Pro se

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

Home Office:
1213 Valley Street
P.O. Box 9271
Seattle, WA 98109-0271
(800) 765-CBIC National

SUPERSEDEAS AND COST ON APPEAL BOND

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR KING COUNTY

BOND NO. SJ5977

PREMIUM $

LANE POWELL PC, AN OREGON PROFESSIONAL CORPORATION

PLAINTIFF(S)

VS.

MARK DECOURSEY AND CAROL DECOURSEY, INDIVIDUALLY AND THE MARITAL COMMUNITY COMPOSED THEREOF

DEFENDANT(S)

SUPERSEDEAS AND COST ON APPEAL BOND

KNOW ALL BY THESE PRESENTS:
That we, MARK DECOURSEY AND CAROL DECOURSEY, INDIVIDUALLY AND THE MARITAL COMMUNITY COMPOSED THEREOF as Principal(s), and CONTRACTORS BONDING AND INSURANCE COMPANY, a corporation duly incorporated under the laws of the State of Washington and authorized to do business in the state of WASHINGTON, as Surety, are held and firmly bound unto LANE POWELL PC, AN OREGON PROFESSIONAL CORPORATION, as Obligee(s), in the penal sum of *FIFTY SEVEN THOUSAND THIRTY SIX AND 30/100* ($ 57,036.30) DOLLARS, lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, legal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Plaintiff(s), on 12/21/11 in the above entitled case, recovered judgment against said Defendant(s) in the sum of *FIFTY SEVEN THOUSAND THIRTY SIX AND 30/100* ($ 57,036.30) DOLLARS; and

WHEREAS, said Defendant(s) has (have) given due and proper notice of appeal from the above decision and judgment to the Court of Appeals or the KING SUPERIOR Court of the State of WASHINGTON.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if said Principal(s) shall pay, or cause to be paid, to the Obligee(s), all costs, interest and damages that may be awarded against them on the appeal, or on the dismissal thereof, and shall satisfy and perform the judgment or order appealed from in full, if for any reason the appeal is dismissed or the judgment affirmed, and shall satisfy in full such modification of the judgment or order as the court may ajudge and award, then this obligation shall be void, otherwise to remain in full force and effect.

SIGNED AND SEALED this 22ND day of June, 2012.

Carol De Coursey

MARK AND CAROL DECOURSEY Principal

APPROVED:

June, 2012

CONTRACTORS BONDING AND INSURANCE COMPANY

By

TERRY L. ROBINSON Attorney-In-Fact

CONTRACTORS BONDING AND INSURANCE COMPANY CORPORATE SEAL 1979 Bridgeport WASHINGTON

BndSCAB.01-WA042799

BONDS cbic INSURANCE

Home Office:
1213 Valley Street
P.O. Box 9271
Seattle, WA 98109-0271

For the CBIC branch nearest you, call toll-free:
(888) 283-2242
(888) 293-2242 FAX

COLLATERAL RECEIPT AND AGREEMENT

This agreement granting a security interest in certain property is made this 22nd day of June, 2012 by the undersigned (herein called Debtor) in favor of Contractors Bonding and Insurance Company (which does business in California as CBIC Bonding and Insurance Company) (herein called Secured Party or Surety). UNLESS NOTED OTHERWISE IN PARAGRAPH N BELOW, THIS AGREEMENT IS GIVEN TO SECURE ALL BONDING (PAST, PRESENT, AND FUTURE) FOR PRINCIPAL(S).

PRINCIPAL(S): ~~MARK & CAROL DECOURSEY~~

DATE OF INDEMNITY AGREEMENT: 6/22/12

Description of Security: (check and complete as appropriate)

☑ 1. Cash in the amount of $ $FIFTY SEVEN THOUSAND THIRTY SIX AND 30/100*

☐ 2. Irrevocable Letter of Credit No. _____ Dated _____ in the amount of $ _____
Issued by _____ (Bank).

☐ 3. Certificate of Deposit (or similar instrument entitled _____)
purchased in Secured Party's name, dated _____ in the amount of $ _____
from _____ (Bank).

☐ 4. A Deed of Trust or mortgage in certain real property dated: _____ and attached hereto as Exhibit A.

☐ 5. Stocks, Bonds or other securities described further in paragraph 7, including (i) all documents, instruments and other property in the possession of Secured Party in which the Debtor now has or hereafter acquires any right and (ii) all distributions with respect to and all proceeds of the property described in clause (i) including, without limitations, Stock Distributions.

☐ 6. Miscellaneous personal property described further in paragraph 7, which is primarily located in _____ (State).

☐ 7. Further description:

WHEREAS, in consideration of execution of the Bond(s) herein defined, or pursuant to Debtor's obligations to Secured Party under the Indemnity Agreement, or for other good and sufficient consideration, the Debtor has given to Secured Party the Security described herein,

NOW, THEREFORE, Debtor hereby represents, covenants and agrees with Secured Party as follows:

A. Definitions:

Affiliate: A person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with any Principal(s) named herein, any Indemnitor, or any Debtor.

Bond: Any obligation, or undertaking of guaranty or suretyship, express or implied, pursuant to which Secured Party is or may be made liable for any obligation of Principal (including but not limited to debts, defaults, actions, or failures to act), whether or not Principal is also liable.

Debtor: Any signator to this Agreement and any other person or entity providing the Security.

Given: Executed, granted, delivered, assigned, purchased for, pledged, conveyed or otherwise provided in whatever way appropriate to the Security.

Indemnitor: Any signator to any Indemnity Agreement (whether dated on, before, or after the date of this Agreement).

Indemnity Agreement: Any agreement (whether dated on, before, or after the date of this Agreement) wherein the signator promises, among other things, to reimburse Secured Party for Loss on any Bond executed for Principal, including, but not limited to, that Indemnity Agreement referenced herein. It also means any other agreement in connection with Bonds executed for any Principal, Indemnitor, or Debtor.

Liquidate: Taking or collecting and selling, negotiating, realizing upon or otherwise disposing of part or all of the Security in any method or form prescribed herein, or otherwise allowed by law, or appropriate to the Security being liquidated. Where appropriate, liquidate includes draws on Letters of Credit or demands for payment under an Assignment.

Loss: Any payment or expense either incurred or anticipated by Secured Party in connection with any Bond or this Agreement, including but not limited to: payment of bond proceeds or any other expense in connection with claims, potential claims, or demands; claim fees; penalties; interest; court costs; and attorney's fees (including but not limited to those incurred in defense of bond claims or pursuing any rights of indemnification or subrogation and any judgment arising from those rights).

Modification: Includes, but is not limited to, renewals, substitutions, riders, endorsements, reinstatements, replacements, increases or decreases in penal sum, continuations or extensions of Bond(s).

Principal: The person(s), or entity, or entities named above, or any Affiliate, or any one or combination thereof, or their successors in interest, whether alone or in joint venture with others named or not named herein, regardless of any changes in business organization or changes in name or tradename made after the date of this Agreement.

Secured Party: Either Contractors Bonding and Insurance Company or its California assumed name, CBIC Bonding and Insurance Company.

Security or Collateral: Any property, real or personal, given as collateral or security under this Agreement, any proceeds thereof, any substitution for such security accepted by Secured Party or proceeds thereof, and any additional security or proceeds thereof required by Secured Party hereafter. Proceeds shall include but not be limited to insurance proceeds from any insurance covering the Security, whether or not such insurance is required under this Agreement.

Stock Distributions: All substitutions and exchanges for and all distributions with respect to stock and rights relating to stock included among the Security, including but not limited to stock and cash dividends, stock splits, readjustments, reclassifications, options, and warrants.

B. The Security given herein is to secure reimbursement of Secured Party for all Loss and to secure performance of the Indemnity Agreement; all covenants, terms and conditions of the Indemnity Agreement are incorporated herein as if fully set forth. Where applicable, all terms and conditions of Exhibit A are also incorporated herein as if fully set forth.

C. With respect to the property given as Security:
   (1) Release of Security
      (a) Secured Party is entitled to retain the Security until its exposure to Loss shall cease as a matter of law.
      (b) Further, Secured Party shall release the Security only if all obligations owing to Secured Party by any Debtor, Principal or Indemnitor have been satisfied.
      (c) Release of Security shall not excuse any obligation owing, herein or elsewhere, to Secured Party by any Debtor, Indemnitor, or Principal.
   (2) Secured Party may Liquidate the Security at its sole option:
      (a) At any time Secured Party (in connection with any Bond):
         (1) Pays any Loss or expense;
         (2) Incurs or is threatened with any liability for Loss or expense whether or not Secured Party sets a reserve for Loss;
         (3) Pays or incurs any expense in enforcing its rights in, collecting, conserving or protecting any of the Security;
         (4) Makes demand for additional security as provided in paragraph F(4) hereof, which demand is not complied with within 5 days;
         (5) Is owed any premiums on any Bond;
         (6) Deems itself insecure;
         (7) Determines that any Principal or Indemnitor is in default of any obligation under any Indemnity Agreement;
         (8) Determines that any Debtor is in default of any provision of this Agreement or any other collateral agreement given by Debtor;
         (9) Discovers the falsity of any representation herein or in any other statement(s) oral or written, given or made by any Debtor, Principal, or Indemnitor; or
         (10) Determines that Debtor is in default of any provision of any Deed of Trust given as Security.
      (b) Where applicable, when described in paragraph J.
      (c) By any means provided for in this Agreement or otherwise provided for by law.
   (3) Secured Party shall have no obligation, but may at its sole Option:
      (a) Do anything for the conservation, protection, enforcement or collection of the Security;
      (b) Fill in all blanks in any transfers of Security, powers of attorney or other documents delivered to it in connection with Bond(s) or the Security, including this Agreement; or
      (c) Transfer to itself all or any part of the Security as agreed herein.

D. In the event of Liquidation of the Security by Secured Party:
   (1) Secured Party may apply, or hold for application, the proceeds of said Liquidation to repay:
      (a) Any Loss or expense paid, incurred, or suffered by it in connection with any Bond or Indemnity Agreement;
      (b) Any premium due from Principal with respect to any Bond; or
      (c) Sums due to Secured Party under paragraph F(1) hereof.
   (2) Any Security or proceeds of Security remaining after the sums referred to in the foregoing paragraph D(1) have been paid, and after the liability of Secured Party as referred to in paragraph C(1) has ceased, will be returned to Debtor or to any person legally authorized to receive them.
   (3) Application of Security shall not release any Indemnitor, including Debtor if Debtor be an Indemnitor, of any obligation to Secured Party which is not satisfied through application of said Security.

E. Secured Party shall not be liable for:
   (1) Depreciation, damage to, or loss of the Security unless caused by Secured Party's sole negligence;
   (2) Any performance of or failure to perform any of the acts permitted by paragraph C(3);
   (3) Any actions or inactions relating to the Security by persons not party to this Agreement;
   (4) Where applicable, investment or reinvestment of the Security; or
   (5) Where applicable, any penalties for early withdrawal or negotiation of the Security.

F. Debtor shall, upon request of Secured Party:
   (1) Repay Secured Party all reasonable sums (including attorney fees) which Secured Party may expend or incur:
      (a) In perfecting, enforcing, collecting, conserving, protecting or Liquidating any Security;
      (b) In responding to any claims by third parties that they have an interest in the Security, whether or not such claims are justified;
      (c) In transfer, registration or delivery of the Security by Secured Party or its nominee;
      (d) In enforcing the terms of this Agreement and any Exhibits hereto; or
      (e) Where applicable, by reason of Bank's failure or refusal to honor the Security.
   (2) Execute all documents and instruments necessary to carry out this Agreement.
   (3) At any time or times hereafter execute such financing statements and other instruments and perform such acts as the Secured Party may request to establish and maintain a valid and perfected Security Interest in the Security at the Debtor's expense, including costs of record searches, filing and recording.
   (4) Deposit with Secured Party additional security satisfactory to Secured Party:
      (a) To offset any depreciation in the total market value of the Security from the market value as of the date of this Agreement; or
      (b) Where applicable, whenever Bank refuses or threatens to refuse to honor the Security.

G. Substituted and Additional Security:
   (1) Secured Party may, at its sole discretion, permit Debtor to substitute other security, acceptable to Secured Party, for the Security given herein. All terms and conditions of this Agreement shall govern the substituted security.
   (2) Secured Party may, pursuant to this Agreement, or to the Indemnity Agreement, or as a requirement for further Bond(s), require or accept additional security. Acceptance of additional security shall not release the Security given herein. All terms and conditions of this Agreement shall govern the additional security.

(3) Later agreements for security executed by Debtor or any other person or entity shall not abrogate this Agreement, nor release the Security given herein. Secured Party's rights under this and later agreements shall be cumulative until the Security granted hereunder is explicitly released.

(4) If the Security herein is given in the form of cash or is at any time converted to the form of cash, held in Secured Party's Trust Account, Debtor agrees that interest earned by such cash shall be credited to and become part of the Security only from the date that Secured Party receives from Debtor all documents required by the Internal Revenue Service or any other taxing authority regarding interest on such accounts (including IRS Form W-9 and its successors). Interest earned prior to receipt by Secured Party of such documents shall be the sole property of Secured Party. Interest which is credited to the Security shall be held by Secured Party as part of the Security unless explicitly agreed in writing otherwise. All rights of Secured Party to the Security shall apply to interest credited to the Security. All taxes on interest credited to the Security shall be the sole responsibility of Debtor.

H. Termination:

(1) Debtor may terminate this Agreement as to future Bonds executed for Principal by sending written notice to Secured Party at its Home Office, 1213 Valley Street, Seattle, Washington 98109.

(2) Future Bonds are all Bonds executed after the termination date, with the exceptions noted in paragraph H(3). The termination date shall be thirty (30) days after receipt by Secured Party of the written notice of termination.

(3) Future Bonds shall not include:

(a) Bonds executed or Authorized prior to the termination date, and Modifications thereof;

(b) Bonds executed pursuant to a bid or proposal Bond which was executed or Authorized prior to the termination date, and Modifications thereof; and/or

(c) Any maintenance or guarantee Bond thereafter executed incidental to any other Bond which was executed prior to the termination date, and Modifications thereof.

(4) A Bond is "Authorized" when approved for execution by Secured Party's underwriters, or promised to Principal or any third party, where, in Secured Party's sole discretion, Secured Party shall deem itself liable or potentially liable in any way for failure to execute such Bond.

(5) The terms and conditions of this Agreement shall not be terminated by reason of the failure of Secured Party to disclose fact(s) known or learned by Secured Party about any Principal, even though such fact(s) may materially increase the risk secured herein. Debtor waives notice of such fact(s) even if Secured Party has reason to believe such fact(s) are unknown to Debtor and Secured Party has had reasonable opportunity to communicate such fact(s) to Debtor. Such fact(s) include but are not limited to fact(s) regarding claims or potential claims against Bonds or regarding Secured Party's decision to Liquidate the Collateral herein.

I. General provisions:

(1) If any term(s) or condition(s) of this Agreement shall be found to be inapplicable to or unenforceable as to the Security given or substituted hereunder, such finding shall not alter the validity of all other terms and conditions herein.

(2) Secured Party shall not be obliged to exhaust its recourse against the Principal on any Bond or any Indemnitor, but may resort to the Security hereunder, without recourse to such parties.

(3) Debtor waives any and all defenses based on the taking or release of other indemnity or security or based on disability.

(4) Secured Party's nominee shall have the same rights as Secured Party hereunder upon Secured Party's direction.

(5) Venue for any suit on this Agreement shall be in King County, Washington and this Agreement is governed by the laws of the State of Washington.

(6) No waiver by Secured Party of any right or remedy hereunder shall be deemed to waive any other right or remedy hereunder or elsewhere.

(7) This Agreement inures to the benefit of the Secured Party, its successors and assigns and shall bind the heirs, personal representatives, successors and assigns of Debtor.

(8) Debtor warrants and agrees that this Agreement and all obligations secured hereby are business and not consumer transactions and that Debtor has full power to enter into this Agreement

(9) All of Secured Party's rights and remedies, whether evidenced hereby or by any other writing shall be cumulative and may be exercised singularly or concurrently. All obligations of Debtor herein shall at once be mature and payable without notice or demand. Unless otherwise required by law, any demand upon or notice to Debtor that Secured Party may elect to give shall be effective when deposited in the mails or delivered to a courier, express, or similar delivery service addressed to Debtor at the address shown at the end of this agreement, or transmitted by telefax or other electronic communication device to a number provided by Debtor to Secured Party. Demands or notices addressed or sent to any other address or telefax number of Debtor at which Secured Party customarily communicates with Debtor shall also be effective when deposited, delivered or transmitted as described above.

(10) If at any time(s) by assignment or otherwise Secured Party transfers any obligations and Security therefor, such transfer shall carry with it Secured Party's powers and rights under this Agreement with respect to the obligations and the Security transferred and the transferee shall become vested with said powers and rights, whether or not they are specifically referred to in the transfer.

(11) Words used herein shall take the singular or plural number, and such gender, as the number and gender of parties Debtor herein shall require. Headings are for convenience only and shall not affect the meaning of the terms of this Agreement.

(12) This Agreement is intended to take effect when signed by Debtor and delivered to Secured Party.

(13) Time is of the essence of this contract, and Debtor shall be deemed to be in default of this Agreement upon occurrence of any event set forth in paragraph C(2). Interest shall accrue, before and after judgment, on all obligations secured by this Agreement at the rate of 1.5% per month from the date of Loss. If this rate exceeds the highest rate allowed by law for transactions of this type, interest shall accrue at the highest rate allowed by such law. All interest is secured hereby.

(14) This Agreement may not be changed or modified orally. No change or modification shall be effective unless specifically agreed to by Secured Party in writing.

(15) If more than one Principal is named in this Agreement, or in the Indemnity Agreement, conjunctively or disjunctively, this Agreement applies in its entirety to Bonds for any and all such Principals, singly or in combination.

(16) It is the intent of the parties to maximize the protection of Secured Party, and any ambiguities shall be construed in favor of Secured Party.

(17) Debtor waives any counterclaim or defenses against any assignee for value.

(18) All Debtors signing this Agreement are jointly and severally liable hereunder.

J. Where the Security is a Letter of Credit or other bank account, certificate, instrument, or document:

(1) "Deemed insecure" as used in paragraph C(2)(a)(6) includes but is not limited to reasonable concerns regarding the ability of Bank to honor the Security.

(2) For Letters of Credit, in the event that Bank elects not to renew or extend the Security, prior to the time set forth for Release of Security set forth in paragraph C(1) above, Secured Party may draw on part or all of the Security and deposit the proceeds in an interest-bearing Trust Account of its choice. The proceeds shall be deemed a substituted security as defined in paragraph G herein, and allocation of interest shall be as described in that paragraph.

K. Where the Security is real or miscellaneous personal property:

(c) Keeping the Security continuously insured by an insurer acceptable to Secured Party against fire, theft and other foreseeable hazards, and such other hazards as may be designated at any time by Secured Party. The insurance shall be in an amount equal to the full insurable value of the Security. At Secured Party's request, such insurance will be designated as payable to Secured Party and Debtor will deliver such policies to Secured Party with proof of payment of premium. Surety shall have all rights to insurance proceeds that are given as to the Security herein with full power to collect such proceeds. Any proceeds paid to or collected by Secured Party shall be considered substituted Security and shall be subject to the terms of paragraph G herein.

(2) Secured Party may inspect the Security at reasonable hours and for this purpose may enter the premises or enter any premises on which the Security is located.

L. Where the Security is miscellaneous personal property, Debtor further agrees that:

(1) Unless Secured Party agrees in writing, Debtor shall not remove (or allow anyone else to remove) the Security from the State designated herein as its primary location.

(2) Debtor warrants that Debtor owns the Security free and clear of all security interests and encumbrances whatsoever. Debtor will not create or permit the existence of any lien or security interest on the Security other than that created herein.

(3) Debtor shall not sell or lease the Security or any interest therein without prior written approval of Secured Party.

(4) Any Certificate of Title now or hereafter existing on the Security will be delivered to Secured Party as legal owner for any motor vehicle and appropriately as secured party or legal owner of any other Security.

(5) Upon default, the debtor shall make the above-described miscellaneous personal property available to Secured Party, and shall assist Secured Party in taking possession of the same.

M. Where the Security is real property, Secured Party and Debtor agree that any warranty of Debtor's sole ownership contained in Exhibit A is subject to only those exceptions presented to Secured Party in writing and accepted by the Secured Party in writing prior to the date of this Agreement.

N. Special Limitations and Conditions (None, if none listed)

For good and sufficient consideration, Debtor agrees to the above provisions and authorizes Secured Party to do any and all of the acts set forth in such provisions when it deems such action to be appropriate.

DEBTOR WARRANTS THAT DEBTOR HAS READ THE ABOVE PROVISIONS AND UNDERSTANDS THAT THEY ARE LEGALLY BINDING ON DEBTOR.

Signature of Debtor:

Company Name (if applicable)

_____

By: _____

Title: _____

Employer ID No.: _____

Address: _____

_____

_____

Phone No.: _____

FAX No.: _____

Individual (if applicable)

Signed [signature]

Print Name: MARK DECOURSEY

Social Security No. 113-40-0888

Signed [signature]

Print Name: CAROL DECOURSEY

Social Security No. 557-67-2742

Address: ~~8209 172ND AVE NE REDMOND WA 98052~~

_____

_____

Phone No.: 425-591-5197

FAX No.: 206 452-5885

Contractors Bonding and Insurance Company hereby acknowledges receipt of this Agreement and the Security described herein.

Dated: 6/22/12

Contractors Bonding and Insurance Company

By: [signature] TERRY L. ROBINSON

Title: _____

AgrCOLR.04-US031491
ASIST/NA/COLRECAG/1/061098

APPENDIX 1242

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

SUPERSEDEAS BOND AMENDED

WHEREAS the Superior Court of Washington in King County on December 21, 2011 ordered that Mark and Carol DeCoursey deposit $57,036.30 in prejudgment interest to the registry of the Court in anticipation of Lane Powell prevailing in the instant case;

WHEREAS the Superior Court denied a reconsideration of this order on May 2, 2012;

WHEREAS the Superior Court denied the same reconsideration a second time on June 4, 2012;

WHEREAS DeCourseys seek discretionary review of these orders;

WHEREAS the Court of Appeals, Div. I, has requested that DeCourseys file a Supersedeas bond for the amount at issue as a condition for staying enforcement of the

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

orders and associated actions in the Superior Court;

NOW, THEREFORE, DeCourseys have obtained the attached bond, and do now file it with the Court.

DATED this 26 day of June, 2012

Carol DeCoursey

Pro se

Mark DeCoursey

Pro se

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