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

9 LANE POWELL, PC, an Oregon
10 professional corporation,

11 Plaintiff,

12 v.

13 MARK DECOURSEY and CAROL
14 DECOURSEY

15 Defendants

No. 11-2-34596-3 SEA

MOTION FOR CR 11 SANCTIONS

16 **1. RELIEF REQUESTED**

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

1 **4. EVIDENCE RELIED UPON**

2 Subjoined declaration of Mark DeCoursey and its exhibits.

3 The pleadings for this case on file with the Court.

4 **5. AUTHORITY**

5 Civil Rule 11 states in part:

6
7 The signature of a party or of an attorney constitutes a certificate by the
8 party or attorney that the party or attorney has read the pleading, motion,
9 or legal memorandum, and that **to the best of the party's or attorney's**
10 **knowledge**, information, and belief, formed after an inquiry reasonable
11 under the circumstances: (1) **it is well grounded in fact**; ... If a pleading,
12 motion, or legal memorandum is signed in violation of this rule, the
13 court, upon motion or upon its own initiative, **may impose** upon the
14 person who signed it, a represented party, or both, **an appropriate**
15 **sanction**, which may include an order to pay to the other party or parties
16 the amount of the reasonable expenses incurred because of the filing of
17 the pleading, motion, or legal memorandum, including a reasonable
18 attorney fee. [Emphasis added.]

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

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

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

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

26 ² It is of interest to note that this lawsuit was filed in violation of CR 11. On December 5,
MOTION FOR CR 11 SANCTIONS- 3

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6. ORDER

A proposed order accompanies this Motion.


DATED this 22 day of June, 2012

Carol DeCoursey



Pro se

Mark DeCoursey



Pro se

23 2012, Lane Powell wrote to DeCourseys promising, "First, we will forbear on demanding
24 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
25 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
26 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.**

MOTION FOR CR 11 SANCTIONS- 4

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

1 **Declaration of Mark DeCoursey**

2 Mark DeCoursey hereby declares as follows:

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

- 5 1. **Exhibit A** is a true and fair extract of a declaration filed to this court by McNaul
6 concerning the fees billed to Lane Powell for the offending motion of March 8, 2012.
- 7 2. **Exhibit B** is a true and fair copy of an order issued by this court signed on February
8 29, 2012 and filed on March 2, 2012.
- 9 3. **Exhibit C** is a true and fair extract of the offending motion filed by Lane Powell's
10 attorneys of record at McNaul Ebel Nawrot & Helgren PLLC.
- 11 4. **Exhibit D** is a true and fair copy of an email sent to Lane Powell's attorneys of
12 record at McNaul by DeCourseys on March 9, 2012.
- 13 5. **Exhibit E** is a true and fair extract of McNaul's argument to the Court of Appeals on
14 May 9, 2012.
- 15 6. **Exhibit F** is a true and fair copy of Lane Powell's letter to DeCourseys dated
16 December 10, 2008.
- 17 7. **Exhibit G** is a true and fair copy of an agreement signed on December 30, 2008 by
18 Lane Powell and DeCourseys.
19
20

21 DATED this 22 day of June, 2012

22 Mark DeCoursey

23 
24 Pro se

MOTION FOR CR 11 SANCTIONS

F

December 5, 2008

Mr. and Mrs. Mark DeCoursey
8209 172nd Avenue N.E.
Redmond, WA 98052-3902

Re: *V&E Medical Imaging Services v. DeCoursey, et al.*

Dear Mark and Carol:

Please find enclosed our latest billing per your request. As I have discussed with Mark, Lane Powell has not been paid for some time. Prior to trial and trial preparation, the balance owed amounts to approximately \$232,000. Currently, we have in trust for you the settlement proceeds in the amount of \$270,000.

We are mindful and empathize with your financial burdens. In consideration of your other debt and modest means, we propose to release \$50,000 to you and apply the balance in partial payment of the outstanding amounts. This must be, as you know, with your permission, however, we make this proposal with the following conditions.


First, we will forbear on demanding payment on the balance of the amount owed until payment on the judgment or settlement with Windermere. Second, that we agree on the balance owed to us and you agree that the amount is reasonable. Third, that Lane Powell receive payment of all of its remaining fees first from the proceeds of the judgment or settlement before the balance is released to you. Fourth, that we cooperate in attempting to achieve a reasonable settlement with Windermere, or, if appellate practice is required, that a reasonable payment plan be executed between you and Lane Powell.

We remain, of course, available to you and wish to see nothing other than more success for you in this matter. While I agree, commensurate with your earlier letters, that Windermere's tactics tend to drive litigation costs higher, your ultimate recovery is also more than three times higher than your prospective damages assessment when we first met. I understand that you have concerns that I have billed more time than necessary in my attempts to get you to settle. While I did not bill all my time in those endeavors, I did bill some as I believed that it was always in your best interest given the costs and continued perils of trial and post trial.

Finally, please let us know when you would like to meet with Mr. Degginger. We can coordinate a meeting as soon as possible.

Very truly yours,

LANE POWELL PC


Brent L. Nourse

DeC 1068

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www.lanepowell.com
T. 206.223.7000
F. 206.223.7107

A PROFESSIONAL CORPORATION
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON
98101-2338

LAW OFFICES
ANCHORAGE, AK . OLYMPIA, WA
PORTLAND, OR . SEATTLE, WA
LONDON, ENGLAND