Mark DeCoursey <mhdecoursey@gmail.com>

Re: Order from the Court, March 2, 2012

1 message

Mark DeCoursey <mhdecoursey@gmail.com> Tue, Mar 6, 2012 at 8:35 AM
To: Malaika Eaton <MEaton@mcnaul.com>
Cc: Robert Sulkin <RSulkin@mcnaul.com>, Robin Lindsey <RLindsey@mcnaul.com>, Carol DeCoursey <cdecoursey@gmail.com>

This case is about a contract for legal services between Lane Powell and DeCourseys, and the parties' performance thereunder. It also concerns Lane Powell's duty as an attorney to its client.

We reserve privilege on all other subjects and issues under CR 26(b) and ER 502.

In addressing the motion for reconsideration, the Court apparently felt it did not need to reconsider past rulings on the subject because none of the past rulings negated or voided our privilege.

Regarding CR 26, your client's discovery responses are now more than 45 days overdue. Please make arrangements to bring this matter up to date at your earliest opportunity.

Carol & Mark DeCoursey

8209 172nd Ave NE
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Home: 425.885.3130
Cell: 425-591-5197
Fax: (206) 452-5885

On Mon, Mar 5, 2012 at 3:47 PM, Malaika Eaton <MEaton@mcnaul.com> wrote:

Dear Mr. and Mrs. DeCoursey:

Your reading of the Court's order is not consistent with its language or intent. The Court did not grant your motion to reconsider or grant you any relief in the Order. Indeed, under LCR 59, the Court cannot grant a motion for reconsideration without requesting a response from the non-moving party. Here, of course, the Court never requested a response from Lane Powell. Instead, the Court's ordered you to comply with its previous order grainting our motion to compel. Please advise immediately as to whether you will comply with the Court's orders. We would prefer not to bother the Court again regarding this issue.

Malaika Eaton

From: Mark DeCoursey [mailto:mhdecoursey@gmail.com]
Sent: Sunday, March 04, 2012 11:38 AM
To: Malaika Eaton; Robert Sulkin; Robin Lindsey
Cc: Carol DeCoursey

Subject: Order from the Court, March 2, 2012

On March 2, Judge Eadie signed the order on our request for reconsideration (attached). Please note that the order states that discovery shall be in accordance with CR 26(b), which states in part:

> In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party ... [Emphsis added]

The order also states that discovery shall be in accordance with ER 502, which states in part:

> (a) Disclosure Made in a Washington Proceeding or to a Washington Office or Agency; Scope of a Waiver. When the disclosure is made in a Washington proceeding or to a Washington office or agency and waives the attorney-client

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privilege or work-product protection, the waiver extends to an undisclosed
communication or information in any proceeding only if:
      (1)  the waiver is intentional;
      (2)  the disclosed and undisclosed communications or information concern
           the same subject matter;
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In this order, Judge Eadie affirms the applicability and governance of those rules over this case. He confirms that none of his orders are intended or expected to negate our privilege over our communications with Lane Powell during the Windermere lawsuit. In Judge Eadie's opinion (and his is the only opinion that matters), privileged communications are still not within the scope of discovery.

Please adjust your client's expectations accordingly. We are not relieving Lane Powell of its obligation to preserve our confidences as our former attorneys, and we are not waiving our right to enforce that privilege as need arises.

Carol & Mark DeCoursey

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