Honorable Judge Redacted D. Eadie
Hearing Date: January 22, 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 **REPLY IN SUPPORT OF MOTION TO STRIKE FROM COURT RECORDS ALLEGED ATTORNEY CLIENT PRIVILEGED INFORMATION AND MATERIAL INTRODUCED BY LANE POWELL WITH SUBJOINED DECLARATION**

Without waiving prior objection that Judge Eadie is disqualified to rule in this case under CJC 2.11(A), DeCourseys file the following with the Court:

In its 1/17/13 *Response*, Lane Powell's counsel at McNaul Ebel Nawrot Helgren engage in the usual invective and name-calling: DeCourseys' pleadings are "rambling," "conspiratorial," and "anti-Semitic." Surely the courts prefer legal argument?

McNaul's SLAPP Suit Gets Slapped by Judge. Lane Powell ("LP") complains that DeCourseys launched a "baseless" attack on Lane Powell's counsel (Rsp. pg. 1 at 23.) But McNaul's SLAPP suit against the Olympia Food Co-Op *was* thrown out of court last year (2/23/12) by Thurston County Judge Thomas McPhee. **Exhibit P**. McNaul's clients worked with StandWithUs, a political action group supported by the Israeli Foreign Ministry -- and a

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group with which Robert Sulkin has been closely affiliated. The Co-Op is boycotting products produced in Israel. A number of McNaul's clients joined the Co-Op after the boycott was in place, gained legal standing, and then filed suit to end the boycott. **Exhibit Q.** McNaul and its clients sought to squash the Constitutional rights of Co-Op members (American citizens) – in order to serve Israel's national interests. The court found the suit violated RCW 4.24.525, the Anti-SLAPP Suit Act.

In its 1/17/13 Response, LP does not dispute any of this. No doubt the McNaul attorneys consider Judge McPhee is "conspiratorial" and "anti-Semitic," too?

Alleged Waiver of DeCourseys Attorney Client Privilege. In its 1/17/13 Response, Lane Powell states that the court has ruled DeCourseys' *"attorney-client privilege has been waived."* (Rsp. pg. 2 at 8-9.) DeCourseys claimed attorney client privilege under CR 26(b), ER 502, and *Pappas v. Holloway*. The Court endorsed and acknowledged those rights on 12/12/11 (**Dkt. 44**) and 3/2/12 (**Dkt 98**), then reversed itself and negated those rights on 4/27/12 (**Dkt. 106A**), without showing how or why DeCourseys rights were voided. Similarly, the court has never addressed *Pappas v. Holloway* or shown how the circumstances of this case meet the tests in that precedent. Even a Judge must follow the law.

But even in its contradictory rulings, the court has said only that DeCourseys must produce privileged material "on the basis that attorney-client privilege between Plaintiff and Defendants has been waived." **Dkt. 106A**. The court has never given LP permission to use privileged material or information in evidence or to file it without seal.

Lane Powell Chagrined: DeCourseys Still Refuse to Waive Privilege. Lane Powell criticizes DeCourseys for not admitting or denying that they have certain opinions or made

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statements on certain subjects. (*Rsp.* pg. 2 at 1-4.) But DeCourseys will not be trapped into breaching their own privilege by discussing what they did or did not tell their attorneys. Lane Powell has breached its own Bar oath, state law, and the Rules of Professional Conduct by publishing materials and information it alleges is privileged. DeCourseys rely on Lane Powell's ***self-incriminating statements.***

"Considerable Time" Not Quantified. Lane Powell repeats words from Atty. Gabel's Declaration **(Dkt. 302)** – that Lane Powell spent "considerable time" shielding DeCourseys' alleged views and statements. (Rsp. pg. 3 at 1-12.) Yet Lane Powell has never quantified the "time" allegedly spent on this work -- even in this briefing. Since the court requested quantification of attorney time and LP has not quantified that time ("considerable time" is not a number), LP tacitly admits the "time" could not be reduced to a number (that is, any segment of any hour). Therefore, these alleged breaches of attorney-client privilege do not meet the standards under which LP excuses its actions.

DeCourseys have shown the court examples of LP's fraudulent billing, such as charging $16,000 for photocopying in the Windermere case and an additional $42,000 for timekeepers to operate the photocopiers. DeCourseys have also shown the Court that LP: (1) Failed to present more than $30,000 to the courts for work in the Superior Court,
(2) Made a secret deal with Windermere to discount the court-ordered post-judgment interest from 12% to 3.49% (below the lowest statutory rate). **Exhibit R** and **Exhibit S**, ¶4.
(3) Permitted the Court of Appeals to reverse the unchallenged REPSA foundation for the fees and costs award, stripping DeCourseys of about $100,000 in awards. **Dkt. 254** ex. E and **Dkt. 254** ex. H.

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1 (4) Charged DeCourseys for time misquoting the law and giving bogus reasons for not
2 fulfilling its contract. **Exhibits T**, **U**, and **V**.
3
4 None of these failures by LP are in any way rebutted by its allegations of "considerable time" spent on the alleged attorney-client privilege information or materials.
5
6 Further, LP cannot quantify the "considerable time" because its own statements have
7 rendered the allegation utterly fictional. LP has already accounted for all of that time as "the
8 strategy of our opponents," and has formally agreed on that truth with DeCourseys in the
9 December 30, 2008 letter of agreement. LP has prevailed on that document in arguing to this
10 court. LP cannot now reverse its argument and its agreement with DeCourseys to some other
11 rationale for quantifying the time. Contrary arguments are blocked by judicial estoppel.
12
13 Lane Powell's self-incriminating assertion that it is betraying DeCourseys' alleged
14 confidences does not advance its case and has no legitimate purpose. It is malicious.
15 Robert Sulkin's Big Lie. On 12/7/12 Lane Powell's counsel Robert Sulkin filed a
16 *Declaration.* (**Dkt. 315**.) In Footnote 3, Sulkin identified Mrs. DeCoursey with an Internet
17 writer, whose "anti-Semitic and conspiratorial views" he alleges are well known and thus not
18 subject to attorney client-privilege. As proof, he cites a website which allegedly containing
19 such views – but the name "Carol DeCoursey" does not appear anywhere on the website. So
20 Sulkin is lying again: Carol DeCoursey's allegedly "anti-Semitic and conspiratorial views"
21 are not "well-known" at all.
22
23 The only text in any of Lane Powell's pleadings that links Carol DeCoursey with the
24 website at issue is Sulkin's Exhibit XX in **Dkt. 315**, which Lane Powell alleges it produced
25 in discovery. ***This is not true.*** LP produced ***NO*** email files in discovery. *Subjoined*
26

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Declaration of Mark DeCoursey, herewith, and *Subj. Declaration* of **Dkt. 271** ¶9-10. LP confessed to this court that it produced only ***non-privileged*** material in discovery:

> In any event, Lane Powell has already produced to the DeCoursey a 739-page production log, wherein Lane Powell describes each of the responsive, **non-privileged documents** it intends to produce … [Emphasis added.] (**Dkt. 253**, pg. 11 fn. 4.)

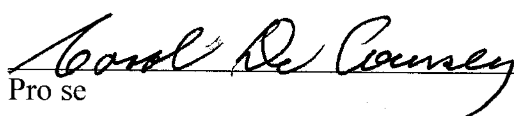
See also **Dkt. 271**, ex. 2, wherein LP wrote: "… attached is a log of the responsive **non-privileged** documents Lane Powell intends to produce to you."

Significantly, Exhibit XX of Sulkin's Declaration includes these words in the footer: "This message is private or privileged." DeCourseys have already shown that Sulkin's declaration contains a critically false statement. Sulkin has no "personal knowledge" of email between DeCourseys and their counsel at Lane Powell. Mr. Sulkin's statement under oath is false, regardless of LP's current argument that "attorneys routinely" lie under oath in declarations to the court. *Rsp.* pg. 6 at 17. To emphasize her point, Ms. Montgomery filed another declaration (in support) with the same exhibit and the same false statement. DeCourseys' motion is extended to include that declaration and LP's response.

LP cites the declaration of Ryan McBride. *Rsp.* pg. 3 at 15. McBride is an unreliable witness who told DeCourseys that responses to petitions must be filed in person (**Exhibit T**); that "The statute only allows fees incurred litigating the CPA claim on appeal." (**Exhibit U**); and that our CPA case should be characterized as "factually unique" with little "public importance." (**Exhibit V**, **Exhibit W.**) He is impeached as a witness and his declaration is dead-on-arrival. A proposed order accompanied the motion.

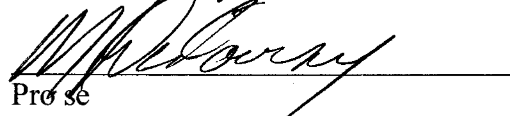
DATED this 21st day of January, 2013.

Carol DeCoursey



Pro se

Mark DeCoursey



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Declaration of Mark DeCoursey

Mark DeCoursey hereby swears and affirms as follows:

I, Mark DeCoursey, being of legal age and competent to testify, do testify under penalty of perjury that:

Exhibit P is a true and correct copy of the Court's oral ruling in the Thurston County lawsuit, *Davis, et al., v. Cox*, et al., Case No. 11-2-01925-7. I retrieved this document from the web page operated by the Center for Constitutional Rights, in good faith that that organization is faithful to its public. If these documents are not fairly represented, I am confident Lane Powell will correct the record.

Exhibit Q is a true and correct copy of the *Declaration of Susan Trinin,* plaintiff in the Thurston County lawsuit, *Davis, et al., v. Cox*, et al., Case No. 11-2-01925-7. Trinin states in ¶13 that the Israel based political action organization StandWithUs provided "assistance" (presumably financial) in filing the lawsuit. I retrieved this document from the web page operated by the Center for Constitutional Rights, in good faith that that organization is faithful to its public. If these documents are not fairly represented, I am confident Lane Powell will correct the record.

Exhibit R is a true and correct copy of the Superior Court Case Summary, Case Number 09-9-05984-1 showing that the Court originally awarded DeCourseys 12% post-judgment interest in the Windermere lawsuit. I retrieved this document from the King County Court web page and printed it with my own equipment.

Exhibit S is a true and correct copy of the *Declaration of* Redacte Redacted *in Support of Mark and Carol DeCourseys' Opposition to Windermere's CR 60 Motion, etc.,* signed and served on November 12, 2009, and filed with the Court for that case.

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Exhibit T is a true and correct copy of an email chain between DeCourseys and Grant Degginger, Ryan McBride, and Andrew Gabel of Lane Powell between February 23 and 25, 2011. In that email, the Lane Powell attorneys asserted that the Supreme Court required responses to a petition to be hand delivery to Olympia, and could not be file over the Internet. The email also contains Lane Powell's bogus and devious excuses for not fulfilling the Lane Powell contract of services and not following our instructions.

Exhibit U is a true and correct copy of an email chain between DeCourseys and Grant Degginger, Ryan McBride, and Andrew Gabel of Lane Powell on February 7 and 8, 2011. In that email, McBride asserts, "The statute only allows fees incurred litigating the CPA claim on appeal." McBride represented that the current state of Washington law is a consequence of the statute, rather than the Lane Powell's own 1986 case of *Nordstrom v. Tampourlos*.

Exhibit V is a true and correct copy of an email chain between DeCourseys and Grant Degginger, Ryan McBride, and Andrew Gabel of Lane Powell on March 22, 2011. In that email, McBride states that our CPA case, which requires a showing of broad public impact, should be characterized as "factually unique" and not of "substantial public importance."

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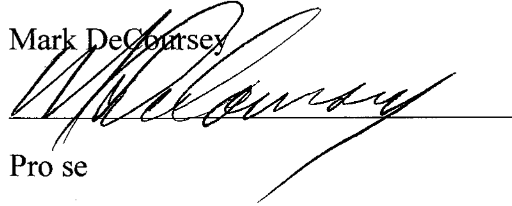
1 **Exhibit W** is a true and correct copy of an email chain between DeCourseys and Grant
2 Degginger, Ryan McBride, and Andrew Gabel of Lane Powell between March 23, 2011.
3 In that email, McBride complains that other Windermere victims had filed a *amicus* brief
4 in support of our opposition to Windermere's petition to the Supreme Court.
5
DATED this 21st day of January, 2013
6
7 Mark DeCoursey
8 
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