



Carol DeCoursey <cdecoursey@gmail.com>

RE: Please Ask for Continuance, Do Not Allow Petition To Go Unanswered

1 message

Degginger, Grant <DeggingerG@lanepowell.com>

Tue, Mar 1, 2011 at 9:02 AM

To: Carol DeCoursey <cdecoursey@gmail.com>

Cc: "McBride, Ryan P." <McBrideR@lanepowell.com>, "Gabel, Andrew J." <GabelA@lanepowell.com>

Carol,

We discussed our concerns and that we could not submit those arguments during our conference call that occurred on February 16th. We also discussed the procedures you would need to follow if you wanted to submit them on your own. At that time the brief was due on the 22nd and we later, at your request, obtained a week long continuance.

From: Carol DeCoursey [mailto:cdecoursey@gmail.com]**Sent:** Tuesday, March 01, 2011 8:52 AM**To:** Degginger, Grant**Cc:** McBride, Ryan P.; Gabel, Andrew J.**Subject:** Fwd: Please Ask for Continuance, Do Not Allow Petition To Go Unanswered

Grant:

Mark sent the 1:38 p.m. message to you (below) while I was away from my computer.

Let the record show we agreed to file the response as it was filed -- without mention of the public policy issues inherent in Windermere's litigation attrition warfare -- under very special conditions: You told us you would withdraw from our case if we insisted on including that issue in our response.

There is nothing to sort out. Had you revealed your position when the email exchange first started, the exchange would have been quite short.

We can't understand why you insisted on telling us the news during a phone conversation hours before the filing deadline, rather than in email two weeks ago, but that is water under the bridge.

Carol

----- Forwarded message -----

From: Carol DeCoursey <cdecoursey@gmail.com>**Date:** Mon, Feb 28, 2011 at 1:38 PM**Subject:** Re: Please Ask for Continuance, Do Not Allow Petition To Go Unanswered**To:** "Degginger, Grant" <DeggingerG@lanepowell.com>**Cc:** "Gabel, Andrew J." <GabelA@lanepowell.com>, "McBride, Ryan P." <McBrideR@lanepowell.com>

Your understanding is correct. Thank you, Grant.

(Mark)

On Mon, Feb 28, 2011 at 1:27 PM, Degginger, Grant <DeggingerG@lanepowell.com> wrote:

Carol and Mark,

While we disagree with the summary statements in your email, the conversation was recorded at your insistence so we can sort them out and review all of our extensive emails over the last several weeks later.

Time is running short and we understand your response as authorizing us to file the brief Ryan prepared. He will try to include a reference.

From: Carol DeCoursey [mailto:cdecoursey@gmail.com]

Sent: Monday, February 28, 2011 1:07 PM

To: Degginger, Grant; Gabel, Andrew J.; McBride, Ryan P.

Subject: Re: Please Ask for Continuance, Do Not Allow Petition To Go Unanswered

Gentlemen:

Pursuant to our phone conversation this morning about our answer to Windermere's petition to the Supreme Court:

Ryan, we appreciate your input concerning the reasons for the present costs/fees situation.

But, gentlemen, as you told us, here's the bottom line:

If we insist on including a cross appeal or an "in the alternative" option that broaches the issue of the vitiation or crippling effect of "litigation attrition warfare" on the Consumer Protection Act, you will withdraw from the case.

You said you would file the enabling paperwork with the court this afternoon.

During our conversation, you also refused to ask the court for a week's continuance so that we might have a "second pair of eyes" take a look at the case.

Grant, much time could have been saved over the last week/week and a half had you told us you would withdraw. Certainly we asked you long before today if that is what you intended to do.

Given our present financial condition, and current Lane Powell invoices of approx. \$350,000, hiring new attorneys is not a practical option. So we really have no choice but to allow you to file Ryan's answer without the cross-appeal or "in the alternative" provision.

Ryan, we hope you can include reference to Mrs. Calmes' testimony about having explicitly complained to Stickney about [REDACTED]

Let us all wish each other good luck!

Sincerely,

Carol & Mark

On Mon, Feb 28, 2011 at 11:06 AM, Degginger, Grant <DeggingerG@lanepowell.com> wrote:

[As soon as Ryan gets off the phone we will call you. Shouldn't be long.](#)

From: Carol DeCoursey [mailto:cdecoursey@gmail.com]

Sent: Monday, February 28, 2011 10:53 AM

To: Degginger, Grant

Subject: Re: Please Ask for Continuance, Do Not Allow Petition To Go Unanswered

Grant--I missed this email in the flurry of our exchange.

11 am would be OK for us.

Carol

On Mon, Feb 28, 2011 at 9:57 AM, Degginger, Grant <DeggingerG@lanepowell.com> wrote:
[Let me know if 11AM will work for you.](#)

From: Carol DeCoursey [mailto:cdecoursey@gmail.com]
Sent: Monday, February 28, 2011 9:52 AM
To: Degginger, Grant
Subject: Fwd: Please Ask for Continuance, Do Not Allow Petition To Go Unanswered

Grant-- Can what y'all have to say be put in email? Mark and I more easily "think" in writing, rather than in verbal communication. Those proclivities, as well as Mark's exhaustion, might make our communication via email more efficient and productive.

Carol

----- Forwarded message -----

From: **Carol DeCoursey** <cdecoursey@gmail.com>
Date: Mon, Feb 28, 2011 at 9:47 AM
Subject: Re: Please Ask for Continuance, Do Not Allow Petition To Go Unanswered
To: "Degginger, Grant" <DeggingerG@lanepowell.com>

Grant--

Mark is exhausted. Even though he was dead asleep, I just woke him up. He told me he needed at least another hour's sleep before he could make any intellectual choices.

Carol

On Mon, Feb 28, 2011 at 9:07 AM, Degginger, Grant <DeggingerG@lanepowell.com> wrote:
[Carol,](#)
[Please tell me when this morning you and Mark would be available to speak with us.](#)

From: Carol DeCoursey [mailto:cdecoursey@gmail.com]
Sent: Monday, February 28, 2011 7:09 AM
To: McBride, Ryan P.; Degginger, Grant; Gabel, Andrew J.; Mark DeCoursey
Subject: Please Ask for Continuance, Do Not Allow Petition To Go Unanswered

On Friday, February 25, we told you we were experiencing a crisis in confidence in Lane Powell and wanted a second pair of eyes to review our legal situation, vis a vis Windermere's petition to the Supreme Court. The issue that needed a "second pair of eyes" concerned the fees and costs provision of the Consumer Protection Act and Windermere's use of litigation attrition warfare, as already explored in this thread. You stated that broaching this subject could not be justified in current law, nor in a possible extension of that law.

Your rationale did not make sense to us. That's why we needed a continuance -- to give a "second pair of eyes" time to review.

We directed you to request a continuance until March 7. You refused.

In refusing to accept our directions, it is apparent that you are now attempting take control of this lawsuit.

We remind you of the letter dated December 30, 2008, in which Lane Powell asked us to pay them \$200,000 from a settlement of \$270,000. In return, Lane Powell assured us that "equal justice under law" would not be impeded by Windermere's attempt to prevail through the power of the purse. Lane Powell, referring to the awards won in 2008, agreed to continue to assist us "regarding possible appeals with regard to the same as necessary to prevail in or retain the awards discussed."

In our view, you are not abiding by your agreements. What might be the explanation? Let us turn to Lane Powell for a possible explanation.

Lane Powell broaches the subject of conflict of interest in a forthright manner. Its retainer agreement recognizes that conflicts of interest can develop. Our Retainer Agreement with your firm, dated September 19, 2007, under the subsection "Conflicts," states in part:

"We have examined our internal data to determine whether any conflicts of interest exist that would preclude us from representing you, and have found no such conflicts . . . Because circumstances change, both we and you must be continually alert to the development of additional information that may give rise to such a conflict . . ."

Now, consider the following:

* Shortly after the trial victory in 2008, we were in the Lane Powell offices talking to Grant Degginger. We said to Grant words to this effect: "Grant, this wonderful victory will open up a whole new line of business for Lane Powell!" Grant did not smile. He said words to this effect: "No, it won't. This may not be at all good for Lane Powell."

Why would such a fine victory in the defense of our home and our rights under the Consumer Protection Act not be good for a large law firm? We now realize the possible significance of Lane Powell's representation of large corporations. We wonder if a vigorous representation of CPA clients and presentation of arguments that might result in the strengthening of the CPA's effectiveness would conflict with the interests of that corporate client base?

* We wonder if Lane Powell represents parties who are being sued, or who may be sued, under the CPA? We wonder whether the vigorous defense of our CPA rights to fees and costs (in conformity with the liberal construction of the CPA laid down by the Legislature), might provide a conflict for you, and might explain your refusal to vigorously defend our awards?

* Lane Powell may itself be employing litigation attrition warfare against the opponents of its clients, and thus does not want judicial discouragement of this practice.

* Grant Degginger is a city councilman for the city of Bellevue, and for several years, served as its Mayor. Doubtless Grant's affiliation with Lane Powell is known to many in politics. Grant seems to be calling the shots and actively making legal decisions, yet he is not named in our filings.

We wonder if a vigorous representation of CPA clients and an aggressive prosecution of their rights would conflict with any of the Bellevue political power bases, particularly in the real estate/construction/banking/development community? We wonder if this would affect Lane Powell's vigor in defending our CPA awards, or be responsible for any decision that would strengthen the CPA's application in society? And we wonder if the City of Bellevue is employing litigation attrition warfare against its legal opponents?

* We recall a visit we made to Lane Powell and meeting Dennis Strasser. When we complained about Windermere's use of litigation attrition warfare, Mr. Strasser defended Windermere, stating of their lawyers, "They are just doing their jobs." Mr. Strasser was surely indicating he would do the same in their position.

* Lane Powell has recently invoiced us for \$350,000. We understand LP would like to get paid and seeks the earliest possible resolution of the matter. We also understand that Lane Powell intends to make up the fee/costs shortfall in the awards by cutting into our damages award. While this may be in LP's interest, it is not such a good result for us. Significantly, LP refuses to take action that might remedy the fee/cost shortfall in the courts, insisting that it is not in our best interests to do so. Instead, Lane Powell

recommends a completely ineffectual action instead -- that we tell the Legislature of the problem.

We are not suggesting anyone is doing anything wrong. We are just scratching our heads and looking for answers that are consistent with the facts.

That's why we want a "second pair of eyes." We are in the process of asking other counsel to look into our situation. Surely you don't object. We believe that is in our best interests, and yours, that this be done. We would like to find a realistic solution for all, so that we can all move on.

Therefore, we direct you once more to seek a continuance. Ask the court to give us until close of business, March 11.

We don't mind if you tell the court what is going on. The Supremes are grown-ups and surely know that, in litigation, "stuff" happens, and sometimes the "stuff" needs to be sorted out.

Whenever we've called the Supreme Court, they've seemed like real nice folks.

If you intend to disregard these instructions, under no circumstances should you allow Windermere's petition to the Supreme Court to go unanswered.

Carol & Mark

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