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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 CONCERNING ACTUAL  
OR FABRICATED EX PARTE  
COMMUNICATIONS BETWEEN  
THE COURT AND LANE POWELL**

**1. RELIEF REQUESTED**

DeCourseys request that the Court clear the appearance of impropriety from the record regarding the anomaly described below, and that the Court take disciplinary action as appropriate.

**2. STATEMENT OF FACTS**

On December 5, 2011, Lane Powell filed and served its *Plaintiff's Reply to Defendants' Amended Counterclaims*.

Paragraph 65 of DeCourseys' *Amended Answer and Counterclaims* states:

The following is pleaded without waiving attorney client privilege.  
[Exhibit 1, page 10]

1 In response to Paragraph 65 on December 5, 2011, Lane Powell's stated:  
2

3 The allegations of this paragraph constitute a legal conclusion to which no  
4 response is required. That said, **the Court has already determined that the**  
5 **Defendants have waived their attorney client privilege** regarding Lane  
Powell's representation of Defendants . . ." [Exhibit 2, page 5, emphasis  
added.]

6 In fact, the Court has published no such determination. The Court has not yet ruled  
7 on (1) DeCourseys' *Motion for Reconsideration and Clarification of Order Denying*  
8 *Discovery Protection Under CR 26c and Sanctions under CR 11*, filed on November 28 and  
9 scheduled for hearing on December 16, 2011, nor on (2) *DeCourseys' Amended Motion for*  
10 *Discovery Plan Under CR 26(f)*, filed on November 21, 2011 and scheduled for hearing on  
11 December 9, 2011.  
12

13 Therefore, on December 5, 2011, neither Lane Powell nor Lane Powell's counsel  
14 could know what Judge Eadie would rule or "determine" at either hearing, neither of which  
15 has yet taken place – unless (1) Lane Powell and Judge Eadie had *ex parte* communications  
16 or (2) Lane Powell simply fabricated the "fact" of Judge Eadie's ruling.  
17

### 18 3. STATEMENT OF ISSUES

19 Have Lane Powell's counsel and Judge Eadie had *ex parte* communications during  
20 which Judge Eadie told Lane Powell's counsel what his ruling(s) will be, vis a vis  
21 DeCourseys' attorney/client privilege?

22 Did Lane Powell's counsel simply fabricate the "fact" that "the Court has already  
23 determined that the Defendants have waived their attorney-client privilege regarding Lane  
24 Powell's representation of Defendants"?

25 Should Lane Powell's statement be allowed to undermine the integrity of the court  
26

1 system and the good reputation of the Judiciary in general and Judge Eadie in particular?

2 **4. EVIDENCE RELIED UPON**

3 DeCourseys' *Amended Answer and Counterclaims*, **Exhibit 1**, excerpted.

4 Plaintiff's *Reply To Defendants' Amended Counterclaims.*, **Exhibit 2**, excerpted.

5 DeCourseys' *Motions*, as cited above.

6 All *Motions* and *Orders* to date in this case.

7 **5. AUTHORITY**

8 Preamble from Code of Judicial Conduct, [2]:

9  
10 Judges should maintain the dignity of judicial office at all times, and avoid  
11 both impropriety and the **appearance** of impropriety in their professional  
12 and personal lives. They should aspire at all times to conduct that ensures the  
13 greatest possible public confidence in their independence, impartiality,  
14 integrity, and competence. (Emphasis added.)

15 Also:

16 **RULE 2.9, Ex Parte Communications.** (A) A judge shall not initiate,  
17 permit, or consider ex parte communications, or consider other  
18 communications made to the judge outside the presence of the parties or their  
19 lawyers, concerning a pending or impending matter . . .

20 In a recent opinion from the Court of Appeals of California, Fourth District, Division  
21 Three. No. G044216, *Kim v. Westmoore Partners, Inc.*, filed November 29, 2011, **Exhibit 3**,  
22 the judges expressed their outrage at litigants and their counsels for whom "anything goes" in  
23 courtroom rhetoric and false statements:

24 The corrosive effect of little lies differs from the corrosive effect of big lies  
25 only in the time it takes for the damage to become irreversible.

26 For those judges, the statement was not just fine sounding words and high, airless  
principles. They sanctioned one of the attorneys \$10,000 for his misrepresentations. The  
jurists went on to explain:

1 Our profession is rife with cynicism, awash in incivility. Lawyers and  
2 judges of our generation spend a great deal of time lamenting the loss of a  
3 golden age when lawyers treated each other with respect and courtesy. It's  
4 time to stop talking about the problem and act on it. For decades, our  
5 profession has given lip service to civility. All we have gotten from it is  
6 tired lips. We have reluctantly concluded lips cannot do the job; teeth are  
7 required. In this case, those teeth will take the form of sanctions.

8 We do not come to this conclusion lightly. Judges are lawyers, too. And  
9 while we have taken on a different role in the system, we have not lost sight  
10 of how difficult it is to practice law. Indeed, at the appellate level, we are  
11 reminded daily how complex and recondite the issues that confront  
12 practitioners daily can be.

13 So we are loath to act in any way that would seem to encourage courts to  
14 impose sanctions for mistakes or missteps. But for serious and significant  
15 departures from the standard of practice, for departures such as dishonesty  
16 and bullying, such steps are necessary. We will step onto the slippery slope  
17 and trust our colleagues on the trial court bench to tread carefully along with  
18 us. It is time to make it clear that there is a price to pay for cynical practices.  
19 If this be quixotic, so be it. Rocinante is saddled up and we are prepared to  
20 tilt at this windmill for as long as it takes.

### 21 **6. ORDER**

22 Upon investigation by the Court, the Court should clear the record as to whether Lane  
23 Powell or its counsel (1) actually knows of a ruling Judge Eadie has not yet published, or (2)  
24 Lane Powell or its counsel fabricated the false report. The Court should take appropriate  
25 action to ensure the integrity of the judicial process and to preserve the good reputation of the  
26 Court, and impose sanctions as it sees fit.

DATED this 6th day of December, 2011.

Carol DeCoursey

Mark DeCoursey

By: s/Carol DeCoursey

By: s/ Mark H. DeCoursey

Pro se

Pro se