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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 TO STRIKE FROM
COURT RECORDS ALLEGED
ATTORNEY CLIENT
PRIVILEGED INFORMATION
AND MATERIAL INTRODUCED
BY LANE POWELL**

Relief Requested

In these proceedings, Lane Powell (“LP”) has published what it alleges are DeCoursey’s attorney client confidences. Without admitting or denying whether DeCourseys gave such information and material to LP, DeCourseys object to LP putting that material and those allegations into evidence, and request this court to strike such from the record and from the clerk’s docket.

Statement of Facts

On November 30, 2012, Andrew Gabel filed a declaration with this court, **Dkt. 302**, in which he alleged he had gained certain knowledge about DeCourseys when he was employed by LP as DeCourseys’ legal counselor.

1 On November 30, 2012, LP's attorney, Hayley Montgomery, filed a brief in which she
2 alluded to that material and amplified on it, making additional allegations of information
3 DeCourseys allegedly told LP in confidence when LP was acting as DeCourseys' attorney.

4 **Dkt. 300.** Publication of those allegations comprises two counts in violation of the RPC and
5 RCW cited: LP first passed the allegation (whether true or false) to its legal counsel, and
6 then through its legal counsel into evidence.
7

8 On December 7, 2012, Robert Sulkin filed a declaration that includes exhibits of material
9 he alleges LP learned from DeCourseys when LP was operating as DeCourseys' legal
10 counsel. **Dkt. 315.** That information was repeated and amplified in other briefs filed by LP
11 the same day, **Dkts. 312** and **314**. If Sulkin were telling the truth, the briefs and the
12 declaration each represent two breaches of confidence, first in LP passing the material and
13 information (whether true or false) to its legal counsel, and then through its legal counsel into
14 evidence.
15

16 Authorities

17 LP has never sought from this Court permission to put such privileged information into
18 evidence, and the Court has never granted LP such permission. The Court had already ruled
19 on the exact number (to the penny) it intended to award LP,¹ so LP had nothing to gain by
20 the breaches it alleges against itself. LP had already filed an explanation for the inflated
21 legal fees with the court over the signatures of LP's attorneys. **Dkt. 253** p. 18 at 10-12:
22

23 The time spent by LP's timekeepers has been reasonable in light of the tasks involved. The
24 DeCourseys cannot dispute this. *Cf.* HAM Ex. K (in 2008 the DeCourseys agreed that LP's fees "were
25 honestly derived, and were necessarily incurred in this litigation **given our opponents' strategy.**"
[Emphasis added.]

26 ¹ **Dkt. 295** p.1 at 22: \$422,675.45

1 Andrew Gabel should not have been solicited for his testimony concerning confidential
2 information about DeCourseys. By soliciting that testimony, Lane Powell and/or its counsel
3 were in violation of RCW 5.60.060(2)(a). By giving that testimony, Gabel violated his oath
4 to the Bar and to the People of Washington. Gabel violated RPC 1.6 and RPC 1.9 and
5 possibly RCW 9A.72. As the firm representing DeCourseys, LP itself was in violation of
6 those RPC rules. And LP's counsel may be in violation of CR 11.

8 Robert Sulkin has produced in evidence what he alleges was an email exchange between
9 Mark DeCoursey and Brent Nourse. This is an extension of the summary judgment
10 proceeding, and CR 56(d) requires:

11 Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits **shall**
12 **be made on personal knowledge**, shall set forth such facts as would be admissible in evidence, and
13 shall show affirmatively that the affiant is competent to testify to the matters stated therein. [Emphasis
added.]

14 But Sulkin has NO "personal knowledge" of email exchanged between DeCourseys and
15 Nourse in 2007; hence, his statement is not a statement of fact – it is a fabrication and should
16 be sanctioned by the Court. Sulkin allegedly knows the Rules of the Court and should not be
17 violating them just on the chance that no one will call him on it. Likewise, this Court should
18 not be accepting evidence from such an indirect source.

19 LP has argued to this court that the statement in the December 30, 2008 agreement is true
20 and binding. **Dkt. 253** p. 18 at 10-12.

22 The time spent by LP's timekeepers has been reasonable in light of the tasks involved. The
23 DeCourseys cannot dispute this. *Cf.* HAM Ex. K (in 2008 the DeCourseys agreed that LP's fees "were
honestly derived, and were necessarily incurred in this litigation **given our opponents' strategy.**"
[Emphasis added.]

24 Once again, LP is caught in contradictory arguments. It cannot allege that the fees were
25 "incurred in this litigation given our opponents' strategy" and prevail on that argument in this
26

1 court, then argue that the fees were incurred because of some personal information
2 concerning DeCourseys, and prevail on that argument also.

3 Since Lane Powell cannot now claim that the fees were incurred due to some personal
4 information about DeCourseys, Lane Powell has no justification for publishing (true or false)
5 information it allegedly learned about DeCourseys while it was operating as DeCourseys'
6 legal counsel. The action of publishing allegedly confidential information cannot advance
7 LP's case, and therefore can have no purpose but mischief and malice.
8

9 As told in the *Declaration of Carol DeCoursey* in support of this motion, Lane Powell's
10 counsel has recently been found by another Washington court to be using his power, as an
11 officer of the court, to punish people he considers are his political opponents.
12

13 Such tactics have no place in Washington courtrooms. The information and all
14 references to it should be stricken from the record.

15 This motion relies on the authority of RPC 1.6, RPC 1.9, RCW 5.60.060.

16 **Evidence Relied Upon**

17 Declaration of Carol DeCoursey in support of this motion and accompanying exhibits
18 The Court's records in this case
19

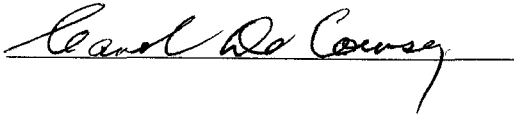
20 **Proposed Order**

21 A proposed order accompanies this motion.

22 DATED this 11th day of January 2013.

23 Carol DeCoursey, pro se

23 Mark DeCoursey, pro se

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