WSBA

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August 26, 2014

Mark DeCoursey
8209 172nd Ave NE
Redmond, WA 98052

Re: Grievances of Mark DeCoursey against:
Grant Degginger (ODC File No. 14-01156)
Ryan McBride (ODC File No. 14-01157)
Robert Sulkin (ODC File No.14-01158)
Malaika Eaton (ODC File No. 14-01159)

Dear Mr. DeCoursey:

Enclosed is a copy of correspondence dated August 15, 2014, which we received regarding the above-referenced grievances.

If you wish to respond to this additional information, please do so in writing within two weeks of the date of this letter. If we have not heard from you by that time, we may analyze this matter based on the information in the file.

Sincerely,

Debra Slater
Disciplinary Counsel

Encl.

cc: Grant Degginger
Ryan McBride
Robert Sulkin
Malaika Eaton

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August 15, 2014

HAND DELIVERED

Ms. Felice P. Congalton
Associate Director
Office of Disciplinary Counsel
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, Washington 98101-2539

Re: **ODC File Nos. 14-01156; 14-01157; 14-01158; 14-01159**
Grievant: Mark and Carol DeCoursey
Respondents: Robert M. Sulkin, Malaika M. Eaton, Ryan P. McBride, and Grant S. Degginger

Dear Ms. Congalton:

Please consider this letter to be the preliminary written response on behalf of Lane Powell and its attorneys, Ryan P. McBride and Grant S. Degginger (collectively "Lane Powell"), and McNaul Ebel Nawrot & Helgren PLLC, and its attorneys Robert M. Sulkin and Malaika M. Eaton (collectively "McNaul Ebel").

I. Introduction

This "grievance" stems from, and is the latest plot twist in, an ongoing fee dispute between Lane Powell and its former clients, Mark and Carol DeCoursey. In short, Lane Powell represented the DeCourseys, pursuant to a written fee agreement, in litigation against a Windermere real estate agent ("the Windermere Litigation") for breach of fiduciary duties and violation of the Consumer Protection Act ("CPA"). Lane Powell settled the case against one defendant for over $200,000, and successfully represented the DeCourseys at trial against Windermere, which resulted in a judgment of over $500,000 in damages, and nearly $500,000 in attorney fees (including a 30 percent multiplier). Lane Powell likewise defended the win on appeal and obtained further fee awards from both the Court of Appeals and the Washington

Supreme Court. *See V & E Med. Imaging Servs., Inc. v. Birgh*, No. 62912-3-I, 2010 WL 4402333 (Nov. 8, 2010), *rev. denied* 171 Wn.2d 1019 (2011). This all over a house the DeCourseys bought for less than $300,000.

The DeCourseys admitted they received regular invoices detailing the work that Lane Powell was performing on their behalf. At the time, they did not raise the issues they now use as the primary basis for their complaints. Instead, not only do the DeCourseys not want to pay any fees for the work Lane Powell did on their behalf, they also want to pocket the fees the trial court in the Windermere Litigation (King County Superior Court Judge Fox) awarded for Lane Powell's work on their behalf. Ultimately, Lane Powell was forced to file suit against the DeCourseys to collect the amounts owed to the firm ("the Fee Dispute Litigation"). Robert M. Sulkin and Malaika M. Eaton of McNaul Ebel represent Lane Powell against the DeCourseys in the Fee Dispute Litigation.

To a large extent, the "issues" raised by the DeCourseys here—including the attacks on Lane Powell, Judge Eadie, and opposing counsel to the DeCourseys in the Fee Dispute Litigation (Robert M. Sulkin and Malaika M. Eaton)—were rejected (often numerous times) by the trial court in the Fee Dispute Litigation. To the extent these issues were the subject of an appeal, they were likewise rejected by the Court of Appeals. To sum up the Fee Dispute Litigation: for years, the DeCourseys turned the Superior Court litigation between them and Lane Powell into a farce, defying every single order with which they disagreed, refusing to engage in discovery, and filing motion after meritless motion. The trial court gave them numerous chances to comply with its orders, and repeatedly warned them of the consequences of their recalcitrance. Undeterred, the DeCourseys continued on their campaign of ignoring the Court's orders and filing repeated motions for reconsideration, seeking a stay from the trial court, seeking a stay from the Court of Appeals, and seeking discretionary review of 22 of the trial court's orders. Each was denied.

When each of these attempts to delay and divert the proceedings failed, the DeCourseys then came up with a new tactic to avoid paying the fees they owed to Lane Powell: to seek recusal of Judge Eadie. The court properly rejected this tactic as well. The Court of Appeals unanimously affirmed Judge Eadie's recusal decision and his summary judgment order in favor of Lane Powell without oral argument. *See Lane Powell PC v. DeCoursey*, No. 69837-1-I, 2014 WL 1600577 (Apr. 21, 2014). (Although the DeCourseys' Grievance discloses that the case was on appeal, they failed to disclose to the Bar that in April 2014 the Court of Appeals affirmed the trial court in full, rejecting the DeCourseys' arguments.)

II. The DeCourseys' Grievance Lacks Merit

In the DeCourseys' 170-page diatribe (not including the voluminous exhibits), consisting of six "chapters" and scores of subsections, which the DeCourseys have apparently sent to the Washington State Legislature, the United States Congress, and who knows how many unspecified "executives branches" and "public policy forums," the DeCourseys include a litany of largely incoherent accusations and "legislative proposals." *E.g.*, Grievance at 7, 25–26 (legislative proposal to require judges who do not sanction litigants to "disgorge one year's income to the general tax coffers"). Among the bizarre claims made by the DeCourseys are the following:

- That the King County Superior Court "deliberately assigned" the case between Lane Powell and the DeCourseys to Judge Eadie as part of a conspiracy against them "to assure the outcome of the case" (*e.g.*, *id.* at 108, 126);

- That Robert Sulkin "has been identified as an agent of the Israeli Law Center, an organization devoted to 'lawfare' and terrorizing political targets into silence" (*id.* at 109);

- That Judge Eadie was not in control of the courtroom but, rather, Lane Powell's attorneys were, and that Judge Eadie was being led around by them (*id.* at 152–53);

- That Malaika Eaton made knowingly false representations of law to the Court by accurately quoting Washington authorities pertinent to the issues; and,

- That Mr. Degginger, as Mayor of Bellevue, conspired with the Mayor of the City of Redmond to "sandbag" the DeCourseys' claims against Redmond because the DeCourseys believe that would be "consistent with the 'old boy network' that seems to run the state of Washington" (*id* at 54).

It would be nearly impossible to take on each and every one of the accusations made by the DeCourseys.[1] Many of these same accusations were heard and properly rejected by the trial court in the Fee Dispute Litigation in rulings that the DeCourseys ***chose not to even appeal.*** For

[1] For instance, the Grievance includes random, unrelated complaints about the attorneys involved in their case and even about firms that are not involved. *E.g.*, Grievance at 51 (arguing about Mr. Degginger's actions as a City Councilmember for Bellevue on unrelated issues); *id.* at 52 (complaining about bill padding at DLA Piper). This letter will not respond to these issues.

instance, the DeCourseys claim that Lane Powell attorneys billed them for time spent photocopying (*id.* at 50), but ignore the fact that the invoices reflect that they were not billed for time spent photocopying. Dkt. 284 at 3 n.6. The DeCourseys claim that Lane Powell acquired a proprietary interest in their lawsuit against Windermere in violation of RCP 1.8(i) and that the fee agreement prospectively limited liability for malpractice (*e.g.*, Grievance at 46–47, 62, 113), but provide no evidence in support of their accusations and ignore the plain language of the fee agreement, which is to the contrary. Dkt. 339 at 6; Dkt. 284 at 5. The DeCourseys insist that they were entitled to both sue Lane Powell for malpractice and at the same time refuse to produce documents relating to that representation on the basis of privilege. These claims, too, have been repeatedly rejected by the trial court, which was forced to hold the DeCourseys in contempt on multiple occasions. *Compare* Grievance at 116–35, 137–40 *with* Dkts. 18, 19, 40, 44, 53, 64, 71, 72, 93, 98 (multiple motions, supporting papers, and orders rejecting DeCourseys' position on privilege). The DeCourseys' serial accusations against both Mr. Sulkin and Ms. Eaton of lying to the Court have also been properly rejected (often repeatedly) by the trial court. *Compare, e.g.*, Grievance at 100–101, 128 (regarding DeCourseys' negotiations with Windermere on payment of judgment) *with* Dkts. 46, 47, 48, 57, 58, 59, 63, 120 (motions and supporting papers, along with orders rejecting same arguments); *compare* Grievance at 140 (accusing Mr. Sulkin and Ms. Eaton of lying to Court) *with* Dkt. 278 at 5 (explaining that materials withheld by DeCourseys were pertinent to Lane Powell's defense of their claims that were stricken by the Court and not necessary to resolve Lane Powell's claim against the DeCourseys).

Other allegations are repeats of arguments that were properly rejected by ***both*** the trial court and the Court of Appeals. For instance, the DeCourseys persist in claiming that Lane Powell had an obligation to forbear from collecting on the significant amounts that the DeCourseys owed in legal fees until after Windermere paid on the judgment in the underlying case. *Compare* Grievance at 67–68, 96–97, 112 *with* 2014 WL 1600577 at *5–6. They likewise devote a significant amount of pages to their accusations against the trial court and their recusal arguments, all of which were rejected by both the trial court and the Court of Appeals. *Compare, e.g.*, Grievance at 109–110, 148 *with* 2014 WL 1600577 at *3–5.

To the extent their arguments have not been examined and properly rejected by the courts, they lack merit in any event. For instance, the DeCourseys argue that Lane Powell, and Mr. McBride specifically, should have moved to modify the Court of Appeals' reversal of the trial court's cost award in the Windermere Litigation appeal. Grievance at 73–75, 79. The trial court awarded the DeCourseys around $45,000 in costs, which included items not permitted by RCW 4.84.010. The best argument to sustain the award was based on a fee clause in the DeCourseys' real estate purchase and sales agreement (REPSA). Lane Powell's appellate brief

repeatedly noted that the trial court found the DeCourseys entitled to an award based on the REPSA ***and*** that Windermere had not assigned error to that finding. Brief of Respondent at 18, 22, 26 & 34.[2] The argument was reasonable, but a difficult one because the Windermere agent was not a party to the REPSA. The Court of Appeals specifically considered Lane Powell's REPSA argument and flatly rejected it as a matter of law. 2010 WL 4402333 at *16 n.24. The Court remanded the award—which was less than five percent of the total judgment amount that it otherwise affirmed—to the trial court for a recalculation of costs. While Lane Powell had hoped for a different result, there were no grounds for a motion to modify this aspect of the Court's ruling and the issue was never discussed.

The DeCourseys also complain about Lane Powell's refusal to comply with their demand to file a cross-petition for review with the Supreme Court in the Windermere Litigation. *E.g.*, Grievance at 81. The Court of Appeals properly awarded the DeCourseys only those appellate fees related to their CPA claim. 2010 WL 4402333 at *16. Mr. McBride explained to the DeCourseys that, unlike the trial court proceedings, it was possible to segregate the time he spent working on the CPA issues from other issues (for which there was no basis for a fee award), and that ethically, he could not argue otherwise. Indeed, the majority of the issues on appeal related to the breach of fiduciary duty claim and damage award; only six pages of Lane Powell's 71-page brief was devoted to the CPA argument. Nevertheless, Mr. McBride wrote a very aggressive fee petition, in which he argued that much of the appeal should be considered related to the CPA claim, *i.e.*, preparation of the appellate record, statement of the case, the fee award, proximate cause, etc. Of the $95,000 incurred on appeal, Lane Powell asked for $56,000 and, over Windermere's objection, the commissioner awarded it $47,000—one-half of all Lane Powell's fees. It was a great result.

After its motion for reconsideration was denied, Windermere filed a petition for review with the Supreme Court. Mr. McBride prepared a draft answer and sent it to the DeCourseys weeks before it was due. About a week later they responded with a revised draft that included three additional pages that, among other things, reviled Windermere for its litigation tactics and asked the Court to "retroactively award full attorney fees incurred by answering Petitioner's appeal to the Court of Appeals, including expenses for preparing the non-CPA sections." Lane Powell immediately advised the DeCourseys that it would not file their addendum/cross-petition because it was legally baseless and because it was contrary to their best interests, which was to convince the Supreme Court to summarily deny Windermere's petition. A cross-petition could suggest that the DeCourseys agreed there were issues worthy of review and increase the chances the Court would grant the petition, thereby jeopardizing the trial court's $1.1 million judgment;

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[2] http://www.courts.wa.gov/content/Briefs/A01/629123%20respondents.pdf#search=DeCoursey.

at a minimum, a cross-petition would give Windermere a *de facto* reply brief it would not otherwise have had the right to file. Nevertheless, the DeCourseys continued to demand that Lane Powell file the "three pages"; Lane Powell continued to refuse and, on the eve of the filing deadline, the DeCourseys asked Lane Powell move for an extension of time, which it did.

Over the next week or so the DeCourseys refused to make a decision on whether they would agree to allow Lane Powell to file the draft answer it had written, or whether they would insist on their version. On the morning the answer was due, the DeCourseys asked Lane Powell to secure another extension of time so it could have a "second pair of eyes" consider their position. Lane Powell insisted on a telephone conference, in which Mr. McBride and Mr. Degginger again explained why Lane Powell would not file a cross-petition that was legally without merit and against the DeCourseys' best interests. Mr. McBride and Mr. Degginger told the DeCourseys that if they insisted on it filing their cross-petition, Lane Powell would have no choice but to withdraw—but, before it did, Lane Powell would immediately move the Supreme Court for an additional 30-day extension of time so the DeCourseys would have sufficient time to get advice from new counsel (who, as Lane Powell later learned, they had already contacted) and to file whatever pleading they wanted. The DeCourseys told Lane Powell to file the answer without their cross-petition, which it did. The Supreme Court denied Windermere's petition.

The DeCourseys also claim that Mr. McBride negotiated a deal with Windermere to ensure that Lane Powell got paid its fees. Grievance at 91–92. In fact, the opposite is true; the DeCourseys intended to replace Lane Powell before an amended final judgment was entered in an effort to avoid paying Lane Powell its fees, but Windermere's unexpected proposal to make an early partial payment forced the DeCourseys' hand. The chronology is straightforward. After Windermere's petition for review was denied, and the Supreme Court's commissioner awarded the DeCourseys yet another fee award on appeal, Windermere filed a motion to modify the fee award, which was set to be heard on August 9, 2011. As a result, even though the DeCourseys' judgment had been affirmed and Windermere's appeal rights exhausted, the mandate had not yet issued. Once the mandate issued, the trial court could recalculate the cost award on remand, enter an amended award, and DeCourseys could finally collect on the judgment.

By this time, the DeCourseys had secretly hired another law firm to handle the remand, but they never told Lane Powell that and, as far as it knew, Lane Powell was their only counsel. On Friday, July 29, 2011, Mr. McBride received a call from Bill Hickman, Windermere's lawyer; he said he was trying to convince Windermere's insurer to make a payment against the judgment amount. The reason was simple: regardless of how the Supreme Court ruled on the motion to modify, the $1.1 million dollar judgment amount was unassailable, and the sooner Windermere began paying, the less post-judgment interest it would owe. He told Mr. McBride

he could not say how much Windermere wanted to pay or when it would pay, but asked him for wiring instructions in the event it did pay, which Mr. McBride provided.

The following Monday, Mr. Hickman sent Mr. McBride a draft partial final judgment for review; again, there was no agreement on when, how much, or even if, Windermere's insurer would pay. Mr. McBride informed the DeCourseys by email of the development, which he thought would make them happy. In response they wrote: "Under no circumstances accept a partial payment from Windermere. We are studying the matter." Mr. McBride thought they were worried that a partial payment might be considered an accord and satisfaction, and he wrote back to assuage them that payment would not prejudice their right to the full amount of the judgment. Apparently, that wasn't their concern. The next morning they fired Lane Powell by letter. That same day Lane Powell filed a notice of attorneys' lien and cooperated with the DeCourseys' new attorney to prepare notices of substitution and withdrawal.

The DeCourseys' accusations against Mr. Degginger are similarly without merit. The DeCourseys incorrectly attempt to suggest that either Mr. Degginger or Lane Powell through Mr. Degginger had a conflict of interest in representing them. The source of this alleged conflict—they claim—was that (1) at the time Lane Powell tried their case, Mr. Degginger was the mayor of the City of Bellevue, and (2) during the course of Mr. Degginger's 2007 re-election campaign, he received a campaign contribution from the Washington Association of Realtors.

Mr. Degginger served as a member of the Bellevue City Council from November, 1999 until December 31, 2011, and served as the City's Mayor from 2006–2010. His service as a councilmember and mayor was listed on his resumé found on the firm's website throughout that entire period. The DeCourseys were well aware of his role with the City and the subject was discussed the first time he met them. Records filed with the Public Disclosure Commission indicate that the Washington Association of Realtors was one of about 200 contributors to Mr. Degginger's 2007 re-election. The contribution was received in late September 2007 and was timely disclosed. He has no idea which individual members contributed to the Realtor's political action committee that year. He was re-elected with over 70 percent of the vote. It strains both logic and common sense to suggest that the Realtor's contribution to Mr. Degginger's campaign had any effect on the conduct of the Windermere Litigation. As described above, Lane Powell aggressively litigated the case against Windermere and the other defendants and achieved a victory for the DeCourseys including a significant award of attorney fees.

The DeCourseys also make vague accusations against Mr. Degginger for allegedly failing to properly supervise Mr. Nourse in violation of RPC 5.1 (Grievance at 6), but fail to describe

what actions supposedly violated the RPC. Notably, the DeCourseys do not accuse Mr. Nourse of any misconduct or ethical violations in the handling of the Windermere Litigation.

Other accusations appear to be generalized complaints against Lane Powell itself or against lawyers not named in the Grievance. For instance, the DeCourseys criticize the fact that the ultimate amount required to try the case exceeded an initial estimate that they claim Lane Powell made regarding the case. Grievance at 38. Of course, this is not grounds for discipline in any event, but the DeCourseys also neglect to inform the Bar of the reasons that this estimate was lower than the amounts ultimately necessary to complete the case. For instance, the DeCourseys—as their Grievance itself substantiates—were the type of client that required significant additional work simply to respond appropriately to their numerous inquiries. *Id.* at 87. Moreover, Lane Powell was forced to expend significant time addressing issues relating to Carol DeCoursey's voluminous grossly anti-Semitic, 9/11 conspiracy, and other bizarre conspiracy writings under the pseudonym "Carol Valentine" that were the subject of significant discovery disputes in the Windermere Litigation.

The DeCourseys' remaining accusations against opposing counsel, Mr. Sulkin and Ms. Eaton, are equally flawed. For instance, the DeCourseys accuse Mr. Sulkin of violating RPC 3.4 and RPC 1.16 when, on behalf of Lane Powell, he declined to provide the DeCourseys with legal advice regarding the recoverability of certain costs incurred in the Windermere Litigation after the DeCourseys had fired Lane Powell and threatened it with legal action. Grievance at 99–100. As is typical of their accusations, the DeCourseys gloss over the nature of their request and Mr. Sulkin's response on behalf of Lane Powell. In pertinent part, the letter Mr. Sulkin sent to the DeCourseys' new counsel reads:

> Your letter requests that Lane Powell provide legal advice to the DeCourseys regarding the cost bill you have apparently been tasked with submitting on their behalf. ("Please advise which of these costs are recoverable under RCW 484.010 [sic] and the category into which each falls.") Lane Powell is not responsible for providing the DeCourseys with legal advice—indeed, the DeCourseys fired Lane Powell and have refused to pay Lane Powell for the work it did on their behalf. That said, if you require specific information to make your own determination with respect to the work you have undertaken for the DeCourseys, please provide us with those questions and we will work with Lane Powell to get you the documentation you require.

Oct. 19, 2011 Letter to Earl-Hubbard. This response is entirely consistent with Mr. Sulkin's professional obligations to his adversary (and Lane Powell's to its former clients) and does not violate the RPC.

HAND DELIVERED

III. Conclusion

In sum, the DeCourseys litany of accusations are baseless, rely on arguments properly rejected (often on numerous occasions) by both the trial court and the Court of Appeals, and misrepresent the facts involved in both the underlying case against Windermere and the subsequent fee dispute brought by Lane Powell. We reserve the right to supplement this response and welcome any questions you may have regarding this long-running dispute.

Sincerely,

Malaika M. Eat

Robert M. Sulkin
Malaika M. Eaton

RMS/MME:rml
cc: Mr. Grant S. Degginger
Mr. Ryan P. McBride