69837-1

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NO. 69837-1-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

LANE POWELL, P.C., an Oregon Professional Corporation,

Respondent,

v.

MARK DeCOURSEY and CAROL DeCOURSEY, individually and the marital community composed thereof,

Appellants.

BRIEF OF APPELLANTS

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A. INTRODUCTION

This appeal from the second of two intertwined cases requires reversal because the trial court's failure to timely disclose, or to recuse, violated the appearance of fairness and due process.

The first suit was brought by the DeCourseys, represented by Lane Powell (hereafter "LP"), against Windermere Real Estate. In the fall of 2008, a jury found that a Windermere agent concealed information and violated his fiduciary duty to the DeCourseys. It awarded damages of $522,200; the trial court awarded $463,427 in attorneys' fees and $45,000 in costs. Windermere appealed and stayed enforcement of the judgment.

Because the DeCourseys could not continue to pay their fees for the appeal, LP agreed to represent them, and not to attempt to collect any additional payment until Windermere had satisfied the judgment.

The Court of Appeals affirmed, except as to costs, and the Supreme Court denied review. The two appellate courts awarded attorneys' fees of $47,000 and $12,000, bringing the total fees award to roughly $536,000. After the mandate, in mid-October of 2011 the case was remanded for entry of a new judgment.

But the DeCourseys had come to believe that LP had "gone easy" on Windermere. They believed that instead of trying to maximize the DeCourseys' recovery against Windermere, LP pulled its punches and even sought to mitigate Windermere's financial losses by agreeing to a too-low judgment interest rate of 3.49%. The DeCourseys fired LP and

obtained a new attorney for the remand proceedings which, among other things, corrected the interest rate. In response to being fired, and before Windermere paid the judgment to anyone, LP brought suit against the DeCourseys, who defended *pro se*.

In the second lawsuit, LP alleged that the DeCourseys had broken their promise to pay LP for handling the trial and the appeal of the first case. The DeCourseys responded with counterclaims, including that LP had breached its contractual promise to refrain from attempting to collect any fees until Windermere had paid off the judgment.[1]

Before the assigned trial judge made any ruling, the DeCourseys filed two motions which highlighted their vehement anti-Windermere sentiments and activities. These pleadings referenced their two anti-Windermere websites; mentioned they had testified about Windermere's predatory business practices before the state legislature; disclosed they had sought to persuade state agencies to initiate civil enforcement actions against Windermere; and included copies of pamphlets they had distributed to the public, which cited and discussed specific court cases in which Windermere agents had been found liable for unethical and illegal acts. The *pro se* DeCourseys confidently assumed that the judge would share their outrage at the wrongs perpetrated by Windermere.

Ten months and many rulings later, the DeCourseys discovered that

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[1] Throughout the appeal, LP charged interest at 9% on its unpaid attorneys' fees, while the DeCourseys' judgment against Windermere earned 3.49% interest. On remand the judgment against Windermere was changed to an interest rate 5.25%.

the trial judge was married to a Windermere real estate broker. Thus, only *after* the trial judge had held the DeCourseys in contempt for failing to comply with discovery orders; *after* he had denied their motion to stay his contempt order pending resolution of their motion for discretionary review of that order; and *after* the trial court had entered an order striking all their counterclaims and all their affirmative defenses; only then did the DeCourseys finally learn for the first time that the trial judge:

- was married to a licensed Windermere real estate broker;
- derived marital income from commissions his wife earned on Windermere sales; and
- had a community property interest in his wife's Windermere Pension Plan.

Three days after learning these facts, the DeCourseys moved for recusal of Judge Eadie and vacation of his prior orders. The judge denied the motion without disputing his economic connections to Windermere through his wife, and without addressing the obvious appearance of fairness issues. The judge rejected the contention he should have disclosed his connections to Windermere before hearing motions. He asserted that since the DeCourseys had made no claims against Windermere in the present suit before him, his wife's employment by Windermere had no effect on his ability to preside impartially over the case. With their counterclaims and affirmative defenses stricken, the DeCourseys were naked before LP's fee claim, and the trial court granted summary judgment to LP. This appeal followed.

The trial judge violated the appearance of fairness doctrine and the

Appellants due process rights, by his failure to either (1) recuse himself, or, (2) to timely disclose his marriage to a Windermere broker, and his partial economic dependence on the financial fortunes of Windermere. Immediate disclosure would have let the DeCourseys file an affidavit of prejudice, removing a judge with social and financial connections to Windermere and getting a trial judge who could rule with both the substance and the appearance of impartiality. Instead, their counterclaims and affirmative defenses were dismissed and judgment was entered against them by a judge who was, both socially and financially, a member of the Windermere family. The judgment below, and all of the trial judge's rulings, must be vacated and the case remanded for further proceedings before a new trial judge.

B. ASSIGNMENTS OF ERROR

Appellants assign error to the trial judge's failure:

1. To recuse himself at the outset of the case;
2. To disclose, at the outset, before making any discretionary ruling, that his wife was employed by Windermere Real Estate and that he and his wife had an economic interest in Windermere;
3. To grant Appellants' motion to recuse and to vacate all prior rulings;
4. And to the trial court's order granting summary judgment to the Respondent on its breach of contract claim.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Under the following circumstances, was the trial judge required to

recuse himself under the appearance of fairness doctrine because there was a reason to doubt the trial judge's ability to be impartial in a case where:

- The defendants had conducted a continuing negative publicity campaign against the company that employed the trial judge's wife, and the employees of that company;
- For many years the defendants had operated, and they continued to operate during the proceedings, websites which conveyed the message that company employees routinely committed illegal, unethical and deceptive acts;
- The defendants testified against the judge's wife's employer before the state legislature;
- The defendants campaigned to persuade government agencies to bring civil enforcement actions against the company; and
- The defendants themselves had successfully sued the judge's wife's employer and had obtained a judgment against it for over $1 million?

2. In a state where each spouse has a community property interest in the other spouse's income, was the trial judge's failure to recuse himself a violation of due process because (a) the defendants' conduct had already harmed, and threatened to continue to cause harm, to the business of his wife's employer, and (b) his wife's income, and the contributions to her pension plan, were dependent upon her employer's economic fortunes?

3. Was the trial judge required to recuse himself under CJC 2.11(A)(2)(c) because his wife had a more than *de minimis* interest that could be substantially affected by the outcome of the proceeding?

4. A law firm made an express promise not to demand any further payment from a client until the client had received from a third party payment in full satisfying a judgment in favor of the client. The law firm

broke that promise by filing suit against the client for breach of contract.

Did the bringing of that lawsuit constitute the law firm's repudiation of the contract between the client and the law firm that released the client from any obligation to perform under that contract?

D. STATEMENT OF THE CASE

1. PROCEDURAL HISTORY

This case is an outgrowth of the DeCourseys' prior third-party claim against Windermere Real Estate and its agent Paul Stickney, which the DeCourseys filed in 2006 (hereafter "the Windermere suit"). CP 66. Beginning on September 19, 2007, the DeCourseys were represented in that case by the LP law firm. CP 1480-1482. Trial was held in October of 2008. After closing, and while the jury was deliberating, LP advised the DeCourseys to offer to settle for $250,000, one fourth of the eventual judgment and just over half the fees incurred. CP 2397. The DeCourseys rejected that advice. On October 30, 2008 the jury returned a verdict in their favor, finding Windermere liable for breach of fiduciary duty and violation of the CPA. CP 1728-1730. Judgment against Windermere for $522,200, plus $463,427 in attorneys' fees and $45,000 in costs, was entered on February 27, 2009. CP 1420-1422. Windermere appealed and pursuant to an agreement written by LP attorneys, LP continued to represent the DeCourseys in that appeal. CP 633-34. On November 8, 2010, this Court affirmed the verdict and the fee award, and set aside the award of costs and remanded for a recalculation of the costs award. CP

1725, 1732-1768.[2] On April 27, 2011, the Washington Supreme Court denied Windermere's petition for review. CP 3807. A Commissioner of the Supreme Court granted the DeCourseys' motion for attorneys' fees for successfully opposing the petition for review. CP 1779. Windermere's motion to modify that ruling was denied on August 8, 2011. CP 3811.

Meanwhile, while the parties waited for the mandate, [3] on August 2, 2011, the DeCourseys instructed LP not to do any work in preparation for the remand. CP 1437. LP responded the same day, informing the DeCourseys that Windermere's appellate attorney had informed LP on July 29th that Windermere was "contemplating making a partial payment on the judgment" in order to "cut off post-judgment interest on the amount paid while we wait for the Supreme Court to rule on the fees award, the mandate to issue, and the parties to resolve the remaining issues on remand." CP 1439.

On August 3, 2011, the DeCourseys discharged LP and Ms. Michelle Earl-Hubbard represented them at the remand hearing in Superior Court. CP 2058. On that same day, LP filed an attorneys' fees lien against the DeCourseys "for services rendered" and for "expenses incurred on their behalf in the amount of not less than $384,881.66."[4] CP 524-25, CP 2058(¶ 5), 2446-47.

On September 22, 2012, attorney Paul Fogarty wrote a lengthy letter to

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[2] The opinion, *V & E Medical Imaging Services, Inc. v. Birgh*, COA No. 62912-3-I, is in the record at CP 1732-1768, can also be found at 2010 WL 4402333.
[3] The mandate was not issued until October 12, 2011. CP 89.

LP setting forth the DeCourseys' complaints about the way LP had handled the Windermere case and seeking a compromise solution. CP 1445-1463. Fogarty explained that the DeCourseys believed LP had breached its fiduciary duties to them in several ways.[5]

On October 5, 2011, LP sued the DeCourseys for breach of contract, claiming that they had failed to pay them for fees LP allegedly earned while representing the DeCourseys in the prior Windermere lawsuit. CP 1-6. LP also served the DeCourseys with interrogatories and requests for production. CP 58, 103-114.

The DeCourseys, acting *pro se*, filed an answer, (and an amended answer), asserting several counterclaims against LP, including breach of fiduciary duty, breach of contract, and legal malpractice. CP 7-35; 200-231. The DeCourseys also pled several affirmative defenses, *inter alia*, the defense of prior breach by LP. CP 205-06. The DeCourseys noted that under the terms of their agreement, LP had expressly stated that "[b]oth you and we have the right at any time to terminate the attorney/client relationship." CP 1484, 205. Moreover in 2008, when LP agreed to continue to represent the DeCourseys in Windermere's

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[4] This amount was later deposited into the Registry of the Superior Court by the joint agreement of the DeCourseys and Windermere. CP 532-35, 541-42.

[5] For example, LP (1) refused to argue on appeal that the DeCourseys were entitled to a broader scope of attorneys fees and costs under the Superior Court finding that Windermere was a third party beneficiary of the Real Estate Purchase and Sale Agreement invoking the "expense clause" of that agreement (CP 4863 & 4874,¶ 5); (2) refused to file a cross-petition for review in the Supreme Court making those arguments; (3) failed to seek exemplary damages against Windermere under the CPA; (4) erroneously advised the DeCourseys that the award of attorneys fees they had received was not taxable; and (5) without consulting the DeCourseys, agreed to reduce the post-

anticipated appeal, LP promised "we will forbear on demanding payment of the balance of the amount owed [by the DeCourseys to the law firm] until payment on the judgment or settlement with Windermere." CP 1949. But LP broke its promise to forbear by suing the DeCourseys before Windermere had made any payment to the DeCourseys. Thus, in their Answer the DeCourseys noted:

> When one party breaches the agreement, the other [party] is no longer bound. LP breached the Agreement on multiple occasions prior to DeCourseys' alleged breach, and cannot now call DeCourseys to account on the strength of that contract. This lawsuit is another breach of the Agreement.

CP 205-6. See also CP 214, ¶ 122; CP 220, ¶¶ 190-192. Under the doctrine of prior breach, since LP had repudiated the contractual agreement, the DeCourseys were no longer bound by it either.

In discovery LP sought the production of documents regarding its own representation of the DeCourseys in the Windermere lawsuit. The DeCourseys continually asserted that the attorney-client privilege protected some of the documents; they also objected that LP already possessed copies of communications between the law firm and the DeCourseys so there was no need for them to produce back to LP thousands of pages of documents which LP already possessed. This led to a protracted discovery dispute. During the first four months of 2012 the trial court entered three orders (on February 3, February 29 and April 25) compelling the DeCourseys to produce the requested documents. CP 977-

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judgment interest rate from the 12% stated in open court by the trial judge to a mere

78, 1029, 1263. The DeCourseys sought discretionary review of these orders, and asked the trial court to stay its discovery order pending a ruling on their discretionary review motion. On June 4, 2012 the judge denied that motion as well. CP 1343.

On June 27, 2012, LP moved for an order holding the DeCourseys in contempt and striking their counterclaims as a sanction for noncompliance under Rule 37. CP 1586-1598. The DeCourseys pointed out that they had complied with the Superior Court's discovery orders by producing over 12,000 pages of documents. CP 1870. Nevertheless, on July 6, 2012, the Superior Court granted LP's contempt motion and struck all of the DeCourseys' affirmative defenses and counterclaims. CP 2042, 2878.[6]

In early August, three days after discovering that the trial court judge's spouse was a Windermere real estate agent/broker, the DeCourseys brought a motion for recusal of the trial judge. CP 2707-2717. That motion was denied on September 5, 2012. CP 2924-25.

On October 19, 2012, LP moved for summary judgment. CP 3349-3378. On November 16, 2012, the Superior Court granted LP's partial summary judgment and ordered the DeCourseys to pay LP $422,675.45, while at the same time reserving the issue of the reasonableness of the number of attorney hours that LP had worked when representing the

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3.49%. CP 1445-1456.

[6] Although they have not assigned error to this ruling, the DeCourseys strenuously deny that they ever knowingly disobeyed the trial court's orders or that their failure to comply was in any way willful and deliberate. As pro se litigants they did their best and in good faith believed that they were in compliance with the court's orders. Moreover, they

DeCourseys. CP 4850-52.[7]

On December 14, 2012, the Superior Court entered Findings of Fact and Conclusions of Law. CP 5522-5527. The Court found that over the lifetime of the Windermere lawsuit, LP charged the DeCourseys a total of $639,232.26 for attorneys' fees, and that this entire amount was reasonable. CP 5525, ¶ 5. It further found that the DeCourseys had paid LP $313,808 for these attorney services, and that they still owed LP the remaining $325,424.26. CP 5524, ¶ 3. Contract interest on unpaid invoices at the rate of 9% added another $97,251.19, which brought the total amount of the summary judgment entered against the DeCourseys to $422,675.45. CP 5523. On December 24, 2012, the DeCourseys moved for reconsideration of the Superior Court's December 14th order. CP 5543-5559. On January 14 and 15, 2013, the Superior Court denied the DeCourseys' outstanding reconsideration motions. CP 5760-61, 5762. Timely notice of appeal was filed on January 28, 2013. CP 5851-68.[8]

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believed they did not have to comply with an order while a motion to reconsider that order was pending, or while discretionary review of such an order was being sought.

[7] On November 26, 2012, the DeCourseys moved for reconsideration of this order. CP 4853-4878. On December 4, 2012, the Superior Court entered a *revised* order granting partial summary judgment which directed the parties to file supplemental briefs on the reserved issue. CP 5173-75. The DeCourseys filed a motion to reconsider that *revised* partial summary judgment order on December 14, 2012. CP 5510-5521.

[8] The Superior Court entered an amended judgment on March 8, 2013, and on April 4, 2013 the DeCourseys filed an amended notice of appeal from that amended judgment. Supp CP 6158-6161, 6165-6171. The Superior Court entered a supplemental "Judgment on Sanctions Orders and Order to Release Funds" on March 28, 2013, and on April 24, 2012 the DeCourseys filed a second amended notice of appeal from that supplemental judgment. Supp. CP 6162-6164, 6172-6177.

2. STATEMENT OF FACTS

a. The DeCourseys' Windermere Real Estate Agent Concealed His Financial Relationship With the Contractor That He Used.

This Court discussed the deceptive conduct of real estate agent Paul Stickney in its opinion affirming the verdict in the DeCourseys' favor:

> In 2004 the DeCourseys moved to Washington. They purchased a home with the help of Paul Stickney, a Windermere Real Estate agent. The DeCourseys intended to renovate the home and Stickney recommended the hiring of contractor Home Improvement Help, Inc. ("HIH"), which was owned and operated by Richard Birgh. Numerous issues arose with the quality and nature of HIH's work. The remodeled home was finished behind schedule and presented structural and other safety concerns. The DeCourseys were unable to obtain an occupancy permit.
>
> A subcontractor of HIH sued the DeCourseys because it had not been paid for work performed on the DeCourseys' home. The DeCourseys answered and filed a third-party complaint against Birgh, HIH, Stickney, Windermere, the City of Redmond, and others. . . .

CP 1733-34 (footnotes 1 & 2 omitted).

This Court upheld the jury's determination that Stickney "breached his fiduciary duty when he failed to disclose his conflict of interest." CP 1736.[9] This Court held that the jury was properly instructed that Windermere's agent had a duty to the DeCourseys to disclose any financial or business relationships with Birgh and HIH. CP 1740-41.

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[9] "In 1996 Stickney and Birgh had entered into a joint venture to develop real property. Together they incurred a joint debt obligation, which at the time of trial had a principal amount of $400,000. Under the terms of their joint venture agreement, Stickney was responsible for making the loan payments. However, when Stickney could not afford to make payments, Birgh would do so if he had the financial resources available. Other evidence suggested that Stickney was entangled with Birgh and HIH. . . ."

b. LP Promises to Forbear Efforts to Collect Its Fees Until After Windermere Paid the DeCourseys' Judgment.

After the jury found in their favor, the DeCourseys correctly anticipated that Windermere would appeal, and expressed concern about their ability to pay LP to continue to represent them throughout the appellate process. On December 5, 2008, LP wrote to the DeCourseys and acknowledged their inability to pay future legal bills which would be incurred in connection with Windermere's appeal:

> Please find enclosed our latest billing per your request. As I have discussed with Mark, LP has not been paid for some time. Prior to trial and trial preparation, the balance owed amounts to approximately $232,000. Currently we have in trust for you the settlement proceeds in the amount of $270,000.[10]
>
> ***We are mindful and empathize with your financial burdens. In consideration of your other debt and modest means***, we propose to release $50,000 to you and apply the balance in partial payment of the outstanding amounts. This must be, as you know, with your permission, however, we make this proposal with the following conditions.
>
> First, we will forbear on demanding payment on the balance of the amount owed ***until payment on the judgment or settlement with Windermere***. Second, that we agree on the balance owed to us and you agree that the amount is reasonable. Third, that LP receive payment of all of its remaining fees first from the proceeds of the judgment or settlement before the balance is released to you. Fourth that we cooperate in attempting to achieve a reasonable settlement with Windermere, or, if appellate practice is required, that a reasonable payment plan be executed between you and LP.

CP 1949 (emphasis added).

Three and a half weeks later, on December 30, 2008, LP and the DeCourseys entered into a modification of their previous fee agreement

[10] These funds came from settlements with other defendants, such as HIH.

which, with relatively minor changes in the dollar figures, was essentially in accord with the modification proposed in LP's December 5th letter. CP 633-34. LP explicitly acknowledged that by inflating the costs of litigation in an attempt to exhaust the DeCourseys' financial resources, Windermere was "attempting to prevail by the muscle of the purse." CP 633. The DeCourseys agreed to make an immediate payment to LP of $200,000 (not $220,000) out of the $275,000 (not $270,000 as stated three weeks earlier) that LP was currently holding in trust. CP 633. In return LP returned $75,000 to the DeCourseys and made them this promise:

> ***LP PC agrees to forbear for a reasonable time on collecting the balance*** and will assist you in your motion for attorneys' fees and costs of the suit as well as collect on the outstanding judgment against Windermere and Stickney in the current amount of $522,200 and other associated judgments that arise from this matter. ***LP PC will also assist you regarding possible appeals with regard to the same as necessary to prevail in or retain the awards discussed.*** . . . .

CP 633 (emphasis added).

c. <u>LP Agrees to Windermere's Suggestion That The Interest Rate on the Judgment Be Set at 3.49%, Instead of 12% As Originally Stated By The Trial Judge</u>.

On November 14, 2008, after granting the DeCourseys' attorneys' fees as requested by their trial counsel, Judge Fox stated orally that the interest rate on the judgment would be 12% per annum. CP 1445. Accordingly, LP prepared an amended judgment using a 12% interest rate. CP 5832. But when Windermere's attorney objected to the 12% rate, LP simply

agreed to accept the lower interest rate that he proposed. CP 5832.[11]

The LP attorney representing the DeCourseys never explained *why* he agreed to this "compromise;" or why he simply abandoned his counter-argument that 12% was the appropriate interest rate; or why he failed to obtain anything of benefit to the DeCourseys in exchange for his agreement to use the much lower 3.49% judgment interest rate. In sum, there was no "compromise," but a capitulation. LP agreed to exactly what Windermere's attorney wanted.

After Windermere had lost its appeal, on August 23, 2011, Michelle Earl Hubbard, the DeCourseys' new attorney who handled the remand hearing, spoke by phone with LP attorney Grant Degginger. CP 1471. Among the issues discussed, Earl-Hubbard inquired "as to how the 3.49% interest was selected in the original judgment" stating that she "could not . . . figure out how they had picked that number." CP 1474.[12] But LP never did explain how that came to pass, or why they had decided to agree to the

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[11] "I sent the draft judgment to Defendants' attorney Matt Davis. The draft judgment incorporated a post-judgment interest rate at 12% per annum.
"Mr. Davis contacted me on February 27, 2009, the same day that presentation of the amended judgment was scheduled, and explained that he believed that the interest rate should be calculated as a tort under RCW 4.56.11 0(3). ***I countered by explaining that the jury had found other bases for liability beyond tort, including violation of the CPA,*** and that the court had awarded attorneys' fees and costs on that same premise as well as Defendants' third-party beneficiary arguments at trial. In response, Mr. Davis offered to calculate the interest rate of the 26 week T-Bill rate as published by the Federal Reserve Board of Governors. ***Mr. Davis explained that the rate should be 3.49%, and I accepted the compromise, inserted the interest rate as agreed into the order*** and forwarded the revised judgment to Mr. Davis for confirmation. Attached hereto as Exhibit C is a true and correct copy of my February 27, 2009 e-mail and attachment to Matt Davis. (Emphasis added).

[12] She recalled that LP "appeared nervous at this point but said they would get us the records of the filings and discussion surrounding that issue." CP 1474.

rate suggested by Windermere.[13] The trial court judge had awarded attorneys' fees under both contract and tort theories. CP 3436, ¶¶ 2-5. The court had awarded the DeCourseys attorneys fees pursuant to the Consumer Protection Act, and also under the "expense of suit" clause in the Real Estate Purchase and Sale Agreement, since Windermere claimed third party beneficiary status under that agreement. *Id.* Thus, there was a strong argument that the 12% interest rate was correct because the fees were being awarded under a contract theory; but, inexplicably LP failed to argue that the 12% rate should be used.

d. The DeCourseys' Request That LP Agree to Negotiate a Reduction in the Amount of Fees Owed.

About a month and a half after discharging LP, the DeCourseys employed another attorney, Paul Fogarty, to communicate with their former LP attorneys. Fogarty sent a 19 page letter to LP to express the DeCourseys' concerns with the way LP had handled their case. CP 1445-1463. "The purpose of this letter," Fogarty wrote, "is to invite LP to address the issues with the goal of resolving them amicably." CP 1445.

The Fogarty letter raised fifteen specific complaints about LP's conduct. CP 1445-1463. Six days later, on September 28, 2011, LP attorney Michael Dwyer wrote back. CP 1717-1718. Dwyer said in his letter, "I do not intend to address each and every one of the assertions that you make," stating that he felt "the record as to the issues you raise is

[13] At the remand hearing following Windermere's unsuccessful appeal, the DeCourseys' new attorney Michelle Earl Hubbard advocated for and persuaded the Court to amend the judgment so that it provided for an interest rate of 5.25.%. CP 2869.

clear." CP 1717. He asserted that Fogarty's letter raised "countless insults, unfounded conclusions, and glaring inaccuracies;" at the same time he indicated a willingness to negotiate. CP 1717. However, the next communication from LP was service a week later with a summons and complaint. RP 11/16/12, at 10.

e. LP Breaches Its Promise to Forbear Efforts to Collect Until the DeCourseys Had Received Payment From Windermere.

On October 5, 2011, LP filed a lawsuit against the DeCourseys. CP 1-6. The case was assigned to Judge Richard Eadie. In several places the complaint referred to LP's prior representation of the DeCourseys in a suit against Windermere.[14] LP alleged that the DeCourseys had "repudiated and breached their contractual obligations and have not paid the amounts due and owing." CP 3, ¶ 3.10. Although LP alleged that it had "performed all of its contractual obligations and [was] entitled to payment of all amounts secured by [its] attorneys lien," CP 3, ¶ 3.9, it failed to mention the fact that it had contractually promised to forbear on demanding payment on the balance of the amount owed "until payment on the judgment or settlement with Windermere." CP 1949, 633.

Thus, despite the fact that it had promised *not* to demand any additional payment until payment from Windermere had been received, and the fact no such payment from Windermere had yet been received, LP

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[14] For example, in ¶ 3.3 the complaint stated that the DeCourseys had "prevail[ed] at trial in the Windermere lawsuit and obtain[ed] a judgment against Paul H. Stickney, Paul H. Stickney Real Estate Services, Inc. and Windermere Real Estate/SCA, Inc., jointly and severally, ... CP 2, ¶ 3.3.

brought suit anyway. About one month *after* LP had filed suit against the DeCourseys, on November 10, 2011, the DeCourseys received payment of the judgment from Windermere. CP 1781-1782, 6053-54.

f. The DeCourseys' Initial Pleadings Detailed Their Anti-Windermere Activities and Sentiments.

Along with the summons and complaint, the DeCourseys were served with LP's First Set of Interrogatories and Requests for Production. CP 58, 103-114. In addition to requested production of "any and all documents referring to or relating to the Windermere lawsuit," LP also asked for production of "any and all documents reflecting or relating to your communications with Plaintiff [LP]." CP 111. The DeCourseys saw that LP was seeking the production of documents which had nothing to do with the current lawsuit. Believing that such non-Windermere lawsuit documents were still covered by the attorney/client privilege, and that they had not waived the privilege for these documents by bringing counterclaims against LP, the DeCourseys, proceeding *pro se*, immediately brought two motions. The first, filed November 3, 2011, was entitled, "Motion for Discovery Protection Under CR 26(c)." CP 36-56. The second, filed November 9, 2011, was entitled "Motion for a Discovery Plan Under CR 26(f)". CP 5917-5996, 5997-6157. Both motions were motivated by their concern that LP would attempt to use "privileged information and materials DeCourseys gave LP during the course of the Windermere lawsuit." CP 37. *See also* CP 5923-24.

In both motions the DeCourseys repeatedly referred to the fact that

they had prevailed in a prior lawsuit against Windermere. CP 36, 37, 5918. In the "Discovery Protection" motion the DeCourseys noted that "The Final Judgment on the Windermere lawsuit has not yet been entered." CP 36. They also stated that "Windermere" had "a history of CPA violations verified by the Courts" and that it had employed "scorched earth tactics through levels of appeals." CP 38, 39.

Unaware of the fact that their assigned trial judge was married to a Windermere real estate agent/broker, the DeCourseys described in great detail their ongoing efforts to publicize the illegal and abusive practices engaged in by Windermere real estate agents and brokers, at CP 50:

- DeCourseys also published the web page http://windermere-victims.com, chronicling Windermere's habitual legal abuse of its customers. . . .
- In 2007, MSNBC did a documentary entitled *Undercover: Homewreckers*. The DeCoursey segment was about twenty minutes, including prominent mention of Windermere. That documentary has been rerun approximately ten (10) times nationally and as recently as September 3, 2011.

In the motion for a discovery plan the DeCourseys stated that they were outspoken opponents of Windermere and that they were campaigning to persuade governmental agencies to impose disciplinary sanctions upon Windermere for repeated violations of the licensing laws:

> In the course of researching for the [previous Windermere] suit, DeCourseys discovered that ***Windermere agents had preyed on many other consumers***. Multiple courts recently have ruled that ***Windermere was in violation of fiduciary, licensing, consumer protection, and other laws***. Yet despite many customer complaints and court decisions, ***the Department of Licensing ("DOL") typically refuses to discipline the offending agencies, brokers, and agents***.

> ***DeCourseys have spoken and written about Windermere's predatory business practices and the DOL's refusal to enforce the licensing laws. DeCourseys have spoken before the Redmond City Council and testified before the Washington Legislature. DeCourseys have distributed flyers at public events and on the street, and have displayed signage in public areas, in the back window of their car, and on their front lawn.*** DeCourseys have appeared in the MSNBC special *Undercover: Homewreckers*, which has been shown nationally at least ten (10) times and as recently as September 2011. DeCourseys' Windermere case has been mentioned in various levels of detail on a number of web pages, and analyzed in the *Washington Free Press* and *Seattle Weekly*. ***For a number of years, DeCourseys have hosted two web sites dedicated to the subject. (RenovationTrap.com and Windermere-Victims.com).*** LP's attorneys involved in the case still boast of the 2008 trial victory on LP's web page. DeCourseys also alerted local, state and federal law enforcement agencies of the problem.
>
> DeCourseys had lengthy correspondence with Attorney General Rob McKenna's office ("AGO"), asking him to take action to protect Washington's citizens, perhaps by filing a Writ of Mandamus. Surprisingly, the AGO defended DOL's flouting of the law. On November 10, 2010 in face-to-face confrontation, McKenna admitted to Carol DeCoursey that he was familiar with DeCourseys' pamphlets on the subject, and declared smilingly he would do "absolutely nothing" to correct the situation. Affidavit of November 11, 2010, **Exhibit B.** DeCourseys produced and distributed informational pamphlets to the broad public, such as the flyer in **Exhibit C**. . . .
>
> DeCourseys were instrumental in sparking a State Auditor's investigation of the Department of Licensing. On information and belief, the Auditor's report was completed in May 2011 but was blocked from publication by the AGO.

CP 5918-19 (emphasis added).

Exhibit B, submitted in support of their motion for a discovery plan, included an article written by the DeCourseys entitled "Wide Open Government – for Big Business." CP 5951. Within that article the DeCourseys asserted that "DOL refuses to enforce the law on Windermere

Real Estate, Washington's largest real estate company," and referred the reader to their two websites, including http://Windermere-Victims.com. CP 5951. The DeCourseys' article went on to describe several illegal acts committed by Windermere. CP 5951-93. 5955-56.[15]

In addition to the Windermere real estate agent who had sold them their home (Paul Stickney), the DeCourseys' pamphlet named Windermere real estate agents and brokers Cheryl Jonet, Samantha Saul, Linda Gabelein, Sonya Eppig, George Rudiger and Lance Miller as the perpetrators of various unethical acts. CP 5951-5953, 5955-5956. Their pamphlet contained references to specific cases (including their own) where they said the reader could find court records which documented the wrongful acts of these Windermere agents. CP 5952-5953.[16]

In another anti-Windermere pamphlet attached to their motion for a discovery plan, the DeCourseys described the conduct of the Department of Licensing and the Washington Attorney General as "Legalizing Crime in Washington" by declining to take enforcement action against

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[15] With the tacit permission of DOL and the AG's office, Windermere agents and brokers have done the following wrongful acts with impunity:

- Knowingly sold a house previously used as a meth lab to unsuspecting homebuyers . . . .
- Exploited a mentally confused old widow and sold her property to themselves and their relatives at bargain-basement prices . . .
- Defrauded a single mother of her home on the eve of foreclosure . . . .
- Knowingly sold a rat-infested house to an unsuspecting buyer without disclosing the rat infestation. . . .
- Presented a buyer with a false property description and a forged signature. . . .

[16] The DeCourseys' pamphlet cited to *Kruger v. Windermere*, Cause No. 02-2-28184-2 SEA and 05-2-34433-4 SEA; *Doorish v. Windermere Real Estate*, Cause No. 08-2-42345-0 SEA; and *Bloor v. Fritz,* 143 Wn. App. 718, 180 P.3d 805 (2008).

Windermere. CP 5955.[17] This pamphlet referred to still more court cases where Windermere agents and brokers had been found to have engaged in wrongful conduct. CP 5956.[18] The pamphlet also stated that the Department of Licensing issued a real estate license to a Spokane Windermere agent with robbery and theft convictions, and to another man who had been convicted of murder. CP 5955. Finally, the DeCourseys attached copies of letters they had written to the Attorney General, in which they complained that he had failed to act against Windermere.[19]

On November 17, 2011, without disclosing the fact that he was married to a Windermere real estate agent and broker, and without recusing himself, the trial court judge denied the DeCourseys' motion for discovery protection. CP 233. On December 12, 2011, again without disclosing that he was married to a Windermere agent and broker, and without recusing himself, Judge Eadie denied the DeCourseys' motion for a discovery plan. CP 504-505.

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[17] The pamphlet said, "Courts have repeatedly found Windermere's agents in violation of their fiduciary duty and the Consumer Protection Act ("unfair and deceptive practices"). Even so, the DOL refuses to sanction the culprits and allows them to continue. Though other companies are disciplined regularly, DOL never touches Windermere."

[18] In one case, this Court affirmed the judgment that Windermere agents Linda Gabelein and Samantha Saul exploited an incapacitated elderly woman by using undue influence to persuade her to sell them her property. *Endicott v. Saul*, 142 Wn. App. 899, 921, 176 P.3d 560 (2008) In *Ruebel v. Eppig*, 140 Wn. App. 1040 (2007), the Court issued an unpublished decision affirming the jury's verdict of breach of fiduciary duty and violation of the Consumer Protection Act by Windermere real estate agent Sonya Eppig.

[19] The letters stated that Windermere "could not effect its longstanding predatory program without the help of the Department of Licensing and the Attorney General's Office. We are concerned about the unlawful help Windermere gets from state agencies." CP 5964. In that same letter the DeCourseys noted that the Attorney General "could file a Consumer Protection Act lawsuit against Windermere himself, just like it says on his webpage." CP 5964.

g. The DeCourseys Move for Recusal As Soon as They Discover That The Trial Judge's Wife Is a Windermere Broker.

On August 9, 2012, the DeCourseys filed a "Motion to Vacate and Recuse" in which they noted they had just discovered that the judge's wife had been a Windermere real estate broker since 2003. CP 2708, 2717, 2723. They produced an internet ad identifying Claire Eadie as a Windermere real estate broker which they had just found. CP 2723.[20] They also examined the judge's Personal Financial Affairs Statements which he had filed with the Public Disclosure Commission during the years 2004 to 2011, and learned from them that the Eadie family had received at least $289,000 in Windermere commissions. CP 2708, 2717, 2725-2734.[21] They also discovered that Judge Eadie and his wife had assets in the Windermere Retirement Plan which were valued somewhere between $40,000 and $99,000. CP 2708-09, 2717, 2737.[22] Finally, they also learned that the Eadies had formed the Eadie Family Trust and that the trust was engaged in the "ownership and management of real estate." CP 2709, 2717, 2740.[23] The DeCourseys asserted that they filed their motion to vacate and recuse "[w]ithin three days of learning of Judge Eadie's apparent conflict of interest." CP 2760.

In their motion the DeCourseys pointed out that at the time LP

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[20] A copy of the ad is attached to this brief as Appendix A.

[21] Copies of the first pages of the judge's Personal Financial Affairs Statements are attached to this brief as Appendix B.

[22] A copy of the second page of the judge's 2011 Personal Financial Affairs Statement, which discloses his interest in the "Windermere Retirement Plan and Spousal," is attached to this brief as Appendix C.

commenced its suit against them, the Windermere lawsuit had not yet concluded, that Windermere had not yet paid the DeCourseys the judgment the DeCourseys had obtained against Windermere, and that Judge Eadie remained silent about his economic interests in Windermere. CP 1426, 2708, 2717, 2719-2721, 2709.

The DeCourseys argued that not only did their past lawsuit against Windermere disclose that they had been "antagonistic to Windermere" in the past, but their first motion filed in the LP lawsuit disclosed "that DeCourseys were – in present time – engaged in activities that were adverse to Windermere (and thus Judge Eadie's) economic interests." CP 2709. Their motion for discovery protection had disclosed their ongoing campaign to persuade Washington government agencies that Windermere was a predatory organization that routinely violated the law, gave the name of their anti-Windermere website, and "revealed that DeCourseys were engaging in a public information campaign urging enforcement of state laws on Windermere." CP 2709-2710.

In their motion to vacate and recuse, the DeCourseys argued that their "activities in the public interest may have threatened the economic interests of Windermere and thereby the interests of the Eadie family, just as Windermere's flouting of the law (and its resultant competitive advantage) enhanced the economic interests of the Eadie family." CP 2710. The DeCourseys cited to the Canons of Judicial Conduct, including

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[23] A copy of the Supplemental Page to the Personal Financial Statement covering the year

the disqualification rule set forth in CJC 2.11, and argued that under this rule Judge Eadie should have either recused himself or disclosed his connection to Windermere through his wife. CP 2713-14.[24] They stated that if Judge Eadie had disclosed his affiliation with Windermere at the outset of the case, they would have exercised their statutory right under RCW 4.12.050 to file an affidavit of prejudice and thereby would have obtained a different trial judge even if he had not recused himself without their having to file an affidavit. CP 2715. On August 13, 2012, Mark and Carol DeCoursey filed identical affidavits of prejudice. CP 2786, 2788.

LP opposed the DeCourseys' motion, arguing that since "Windermere is not and never has been a party to this lawsuit" (between LP and the DeCourseys), and since the present lawsuit "in no way implicates any of Windermere's interests," there was no reason for the judge to recuse himself. CP 2834. LP also argued that since the lawsuit was filed in October of 2011, the DeCourseys had failed to exercise due diligence by failing to discover the factual basis for their motion until August of 2012:

> Any fault as to the "late discovery" of this alleged conflict of interest is their own, the DeCourseys were required to "use due diligence in discovering possible grounds for recusal" and then "promptly seek[] recusal." *Sherman v. State,* 128 Wn.2d 164, 205, n.15, 905 P.2d 355 (1995). They did not.

2011 and containing disclosure of the Eadie Family Trust is attached as Appendix D.

[24] "Rule 2.11 required Judge Eadie to announce his conflict of interest and recuse himself immediately upon his discovery that there was a conflict, or that his personal and professional positions might reasonably be seen to be in conflict. Despite this Rule, Judge Eadie remained silent throughout the case." CP 2714.

CP 2835.[25]

The DeCourseys pointed out it was incorrect to view LP and the DeCourseys as "equally adverse to Windermere in the underlying lawsuit." CP 2860. They noted that in their counterclaims they had alleged that during the course of the Windermere lawsuit, "LP committed various acts of malpractice which disadvantaged DeCourseys and benefited Windermere." CP 2860.

In answer to LP's contention that they should have discovered Judge Eadie's marital connection to Windermere by conducting an investigation of the judge and his wife within the first few days after his assignment to their case, the DeCourseys replied at CP2888:

> Litigants before the King County Superior Court are not required or expected to conduct a background check of their assigned judges to see if the judicial environment has been booby-trapped against them – within ten days of the assignment. Surely that is not the intent of RCW 4.12.050.

On September 5, 2012, Judge Eadie denied the DeCourseys' motion to vacate and recuse. CP 2924-25. He endorsed LP's argument that LP and the DeCourseys were both "adverse to Windermere in the previous action" and noted that neither LP nor the DeCourseys were making any claims

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[25] LP's citation to *Sherman* is puzzling. The *Sherman* Court ***rejected*** the contention that the appellants had "waived their right to move for recusal because they had the files [which documented the trial judge's improper ex parte contact with physicians monitoring Respondent Sherman] for several months before they raised the issue." The Court agreed with the trial court that the Appellants had raised the issue in a timely manner. In the present case, although the trial court denied the DeCourseys' motion to recuse, he never suggested that his denial was premised on the ground that the motion was untimely. Nor could he have done so, since the DeCourseys not only filed their motion three days after they learned of the judge's connection to Windermere, they also moved to shorten time so that their motion would be heard on an expedited basis. CP 2743, Exhibit B.

against Windermere in the present lawsuit before him. CP 2925.[26]

h. The Trial Judge Strikes The DeCourseys' Counterclaims and Affirmative Defenses.

The Superior Court's July 6, 2012 sanctions order states in part:

> The discovery violations by the Defendants are substantial, and have been repeated despite this Court's orders to compel. The imposition of further deadlines would not be likely to result in meaningful compliance. The discovery sought by Plaintiff is clearly material to its case and to its defense to Defendants' counterclaims and affirmative defenses. After considerable reflection on this case, the Court is unable to conceive of any lesser sanction than striking Defendants' counterclaims and affirmative defenses that has any reasonable prospect of permitting Plaintiff to proceed to trial on the merits of its claim in a reasonably timely manner.

CP 2041. Accordingly, the Superior Court struck the DeCourseys' counterclaims and affirmative defenses. CP 2042.

i. Discussion of the "Sensitive Issue" of the Judge's Connection to Windermere at the Summary Judgment Motion Hearing.

On November 16, 2012, the parties argued LP's motion for summary judgment. LP's attorney started by saying he intended "just to give a quick background" to the case, even though he knew the judge was fully familiar with it. RP 11/16/12, at 11. But after LP's attorney had spoken a single sentence, Judge Eadie interrupted him and directed him to skip over any mention of the facts of the prior Windermere suit because that was a "sensitive issue":

> MR. SULKIN: . . . The DeCourseys paid $280,000 approximately for a house that they claimed had some problems with due to construction work.

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[26] A copy of the Judge's order denying the DeCourseys' motion to vacate and recuse is attached to this brief as Appendix E.

> THE COURT: Mr. Sulkin, I don't want to interrupt too much, but ***I think that the issues of the Windermere lawsuit are sensitive in this case, and I don't want any suggestion in this record that anything that I am doing here is affected at all by the facts of the Windermere lawsuit***. So I'm going to ask you to skip over those facts.

RP 11/16/12, at 13-14 (emphasis added).

Notwithstanding the fact that he directed LP's attorney not to mention the Windermere lawsuit, the trial court judge himself questioned counsel extensively about the obvious relationship between LP's damages and the prior Windermere suit, and ended up mentioning the Windermere lawsuit himself several times:

> "THE COURT: All of the fees that you're seeking by way of damages in this case, by way of damages, I can make a distinction between damages and attorneys' fees that you may be seeking and may be not seeking in this case, but ***all of the fees that you are seeking*** by way of damages that [sic] ***were fees that were earned in the Windermere litigation*** that have been addressed by the trial court and the Court of Appeals and the Supreme Court, maybe two of those?
>
> MR. SULKIN: Yes, with an asterisk if I may.
>
> THE COURT: Go ahead.
>
> MR. SULKIN: Okay. There were certain claims ***in the underlying Windermere case***, I don't want to get into it, for which there was fee shifting, okay. (Emphasis added).
>
> THE COURT: Yes.
>
> MR. SULKIN: And certain claims for which there was not fee shifting . . .
>
> THE COURT: But what I'm trying to get at is there any fee that you're seeking here today that was related to ***performance in the Windermere litigation*** that wasn't either, a, approved by the court ***in the Windermere litigation***, or, b, was a part of an application to

> the court ***in the Windermere litigation***? Is [sic] there ***any Windermere litigation fees*** you're asking me to review that haven't been reviewed by another court?

Id. at 19-21 (emphasis added).

In support of his motion for summary judgment, LP's counsel noted that the Court had already "struck all [the DeCourseys'] affirmative defenses and all of their counterclaims. And in briefing to the Court of Appeals which we point out in our brief, they state that's all we have. We have no other defenses but that. So on a procedural basis *they have no defense*, and they have offered in their brief [in opposition to summary judgment] no evidence." *Id.* at 16-17 (emphasis added).

Carol DeCoursey agreed that the Court had stricken all their counterclaims and all their defenses, and asked "what happens when we go to trial?" *Id.* at 28. The trial judge replied that was precisely why LP had moved for summary judgment and explained that if summary judgment was granted there would be no trial. *Id.* Carol DeCoursey thanked the judge for explaining that. *Id.* She asked the Court to restore the counterclaims and defenses and to deny summary judgment. *Id.* at 33. Lastly, Carol DeCoursey politely explained that although she was sympathetic to the trial judge's position of being married to a Windermere agent and broker, things simply didn't seem right:

> And judge, I really do understand your sympathy with the issue of Windermere. It's – we have done our very best to expose their unlawful actions and the corruption of the government agencies that allows them to have, you know, an unfair place in the marketplace. And ***I understand your wife works for them and you love her and she loves you and all of that, and we're very***

sympathetic to that. But really, sir, it doesn't look good and it doesn't feel good and it doesn't – it doesn't – it doesn't – it's not good.

RP 11/16/12, at 33-34 (emphasis added).

The trial judge replied that his wife was not involved with Stickney, the agent who had breached his fiduciary duties to the DeCourseys:

> THE COURT: Sure, I understand. I just want you to understand too even though my wife was not involved in this agent – or with this office of the agent or anything –
>
> MRS. DECOURSEY: I understand that, sir.
>
> THE COURT: -- she's an independent agent like most are.[27]
>
> MRS. DECOURSEY: But Windermere operates – I believe we have been through it. Windermere operates as a single company. They do sir. They do indeed. You should have a look at our page, Windermere-Victims dot com. You might learn quite a lot about your wife's employer.
>
> * * *
>
> THE COURT: Okay.
>
> MRS. DECOURSEY – we can understand that you're feeling protective but still anyway, enough said.

RP 11/16/12, at 34.

Following this exchange the trial judge questioned LP's attorney

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[27] It is not clear what the judge meant to convey by describing his wife as an "independent agent." If he meant that she did not work in the same office as Stickney, that was certainly true. But if he meant that she had no connection to Windermere, or that she is not supervised by Windermere, that clearly is not accurate. Every licensed real estate broker, such as Claire Eadie, is by law "a natural person acting *on behalf of a real estate firm* to perform real estate brokerage services *under the supervision of* a designated broker or managing broker." RCW 18.85.011(2) (italics added). The term "real estate firm" is also statutorily defined as a "legally recognized business entity conducting real estate brokerage services in this state and licensed by the [Washington State] department [of licensing] as a real estate firm." RCW 18.85.011(17). Claire Eadie was identified on the website of "Windermere Real Estate" as one of Windermere's agents and her email address was given there as ceadie@windermere.com. CP 2723.

further about the relationship between the fees LP was seeking in the suit before him and the prior lawsuit:

> THE COURT: Excuse me. Just so I'm understanding as we go along. Are those fees that you're asking me to look at to determine if I see anything wrong with them related to ***the Windermere litigation*** –
>
> MR. SULKIN: Yes.
>
> THE COURT: -- directly?
>
> MR. SULKIN: Yes.

RP 11/16/12, at 37 (emphasis added). A moment later attorney Sulkin told the trial court, "we think the Court should look at the fees to make sure it's comfortable with them. . . . You do have an independent obligation." *Id.* at 42-43. He agreed that the court should review the number of hours that LP was seeking compensation for. *Id.* at 43.

At the close of the hearing, the judge said that he was going to do some more research and, depending upon what he found he might refer the decision on the reasonableness of LP's hours to another judge. See RP 11/16/12, at 57-58 (emphasis added).[28] The court then asserted that he

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[28] THE COURT: . . . ***I think I can find without getting into any Windermere evaluation that the courts have approved those hourly rates.*** . . . So the hourly rates are all determined to be reasonable.

The only question is on the number of hours and whether the number of hours are reasonable. Now there hasn't been a dispute from you on that. I may just go back and check a little law on that to ensure that if the fact that you did not dispute those in this hearing closes the book on that, then we'll close the book on that.

If it says that I have to go back and make an independent review of those, . . . then that's another question and ***that's something that I am concerned would bring me into an evaluation of the Windermere litigation and put me in a position of an appearance that I shouldn't be doing that because of my wife's occupation as an independent agent working out of a Windermere office, going back and evaluating Windermere. And I may*** – if it comes to that I will look at the law and I [will] find out whether I can rely on the absence of an objection, ***but if it comes to that I may defer that to another judge.***

was not biased in favor of Windermere:

> THE COURT: . . . I don't think – ***I don't have any prejudice or bias in favor of Windermere.*** It's a big organization. It's like a lot of others. It didn't have any connection to my family or otherwise with the transactions that caused your lawsuit.
>
> ***I'm not defensive for Windermere.*** I have no financial stake in Windermere, my wife doesn't. She earns commission from her sales of houses she's involved with and pays a portion of that to Windermere; the Windermere franchise that she works from which was not the Windermere franchise involved here.
>
> But in any event, ***I don't think I have a conflict on that but I respect your concern.*** And so I think that if ***it comes down to my evaluating the litigation that involved Windermere directly and might involve then some evaluation of Windermere's conduct, then I think I would at that point recuse and leave that issue to another judge,*** but I don't know if we have to be there or not. I don't know that we don't have it covered already.

RP 11/16/12, at 58-59 (emphasis added).

The trial court then granted partial summary judgment to LP on liability, and reserved the issues of whether the number of hours worked by LP were reasonable. RP 11/16/12, at 60-62.

> THE COURT: . . . the summary judgment motion is granted and that we are going to go to the extent requested except that we're going to look back at certain hours to see if I have to determine whether they're reasonable or not. If I don't have to go through a reasonableness determination on the hours, then this would be the final order. ***If I do have to go through a reasonableness determination on those hours, then it will be my – I'm thinking very seriously about assigning that to a different judge.***

RP 11/16/12, at 70 (emphasis added).

The Court then entered an order of partial summary judgment, awarding LP judgment for $384,881.61 for attorneys' fees previously found to be reasonable by other courts, and for an additional $37,793.79 of

prejudgment interest. CP 4851. The order further provided at CP 4852:

> However, the parties shall submit briefs (no longer than five pages) on whether this Court must review the number of hours worked by LP that were previously not reviewed by another court to determine reasonableness. As to such hours no summary judgment shall be entered. . . . .

LP's brief requested that the trial court judge review for reasonableness the additional amount of $152,256.10 in fees and costs which no other court had previously reviewed. CP 4883. The DeCourseys objected to the reasonableness of this request, pointing out that the appellate courts had previously found fees of $416,061.50 to be reasonable, and they had already paid LP $313,808. CP 5178.

Ultimately, the trial court judge did *not* recuse himself from making the decision on the reasonableness of the attorneys' fees which LP charged to the DeCourseys. On December 14, 2012, the trial court judge entered findings and conclusions in which he found that all of LP's requested attorneys' fees were reasonable. The court found that (i) LP had reasonably charged the DeCourseys $639,232.26 in fees and costs, and (ii) that the DeCourseys had not paid $325,424.26 of that total. CP 5524.

E. STANDARDS OF APPELLATE REVIEW

Where the facts regarding the judicial officer are undisputed, questions regarding the appearance of fairness doctrine and due process are legal and [are] reviewed de novo." *In re Disciplinary Proceeding of King*, 168 Wn.2d 888, 898, 232 P.3d 1095 (2010).

Courts "review de novo the construction of a court rule because it is a

question of law." *State v. Robinson,* 153 Wn.2d 689, 693, 107 P.3d 90 (2005).

An appellate court "review[s] an order granting summary judgment *de novo*, engaging in the same inquiry as the trial court." *Marquis v. City of Spokane*, 130 Wn.2d 97, 105, 922 P.2d 43 (1996).

F. ARGUMENT

1. THE TRIAL JUDGE'S FAILURE TO RECUSE HIMSELF VIOLATED THE APPEARANCE OF FAIRNESS.

a. The Applicable Canons of Judicial Conduct.

In their recusal motion the DeCourseys correctly argued that the trial judge was not "exempt from the Canons of the Code of Judicial Conduct," and that he was "disqualified under the Code to preside over this case" because his participation would "give the appearance of protecting his own interests at the expense of the administration of justice in Washington." CP 2712. They cited to and quoted from several provisions of the Code of Judicial Conduct including the Preamble,[29] Canon 1.2,[30] and Canon 2.11(A):

> **A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned,** including but not limited to the following circumstances:
> (1) **The judge has a personal bias or prejudice concerning a party** or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.
> (2) . . .
> (3) The judge knows that he or she, individually or as a fiduciary,

[29] "Judges . . . should aspire at all times to conduct that ensures **the greatest possible public confidence in their independence, impartiality**, integrity and competence . . . ." CP 2713 (emphasis in original).

[30] "A judge . . . shall avoid . . . **the appearance of impropriety."** CP 2713 (emphasis in original).

> **or the judge's spouse**, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, **has an economic interest in the subject matter in controversy or in a party to the proceeding.**

CP 2713-14 (emphasis in original).[31]

Judge Eadie denied the DeCourseys' motion to recuse without addressing the fact that his wife worked for Windermere, or that the DeCourseys sought to have Windermere and its agents prosecuted for violations of law. He simply noted that Windermere was not a party to the case before him, and failed to address any of the judicial canons that were raised and which plainly required him to recuse. CP 2925.[32]

b. <u>The Critical Importance of the *Appearance* of Impartiality</u>.

In addition to actual impartiality, our system of jurisprudence demands that "there must be no question or suspicion as to the integrity and fairness of the system, *i.e.,* 'justice must satisfy the appearance of justice.'" *Chicago & Milwaukee RR Co. v. Human Rights Comm'n,* 87 Wn.2d 802, 808, 557 P.2d 307 (1977). When our state was still in its first decade, the Washington Supreme Court "recognized the importance of appearances in preserving the integrity of our judicial system." *Id.*

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[31] Comments [2] and [5] to Canon 2.11 provide that "[a] judge's obligation not to hear or decide matters in which disqualification is required applies ***regardless of whether a motion to disqualify is filed***," and state that "[a] ***judge should disclose on the record*** information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, ***even if the judge believes there is no basis for disqualification***." CP 2714 (emphasis added).

[32] "Plaintiff's complaint in the case before this court makes no claims for relief from Windermere, nor does the Defendants' comprehensive and detailed Answer, Affirmative Defenses and Counterclaims. The present case was when filed, and remains today, an action brought by a law firm against a former client that it contends is obligated to it for unpaid fees. Windermere is not now, and never has been a party to this action."

State ex rel Barnard v. Bd. of Education, 19 Wash. 8, 18, 52 P. 317, 321 (1898).[33] *Accord State v. Romano*, 34 Wn. App. 567, 662 P.2d 406 (1983).

"[E]ven a mere suspicion of irregularity, or an appearance of bias or prejudice, is to be avoided by the judiciary in the discharge of its duties." *Human Rights Comm'n*, 87 Wn.2d at 808. *Accord State v. Madry*, 8 Wn. App. 61, 69-70, 504 P.2d 1156 (1972).

c. **To Show An Appearance of Fairness Violation One Need *Not* Show That The Judge's Impartiality Was Actually Affected**.

Washington courts have repeatedly held that "in deciding recusal matters, actual prejudice is not the standard. . . . [W]here a trial judge's decisions are tainted by even a mere suspicion of partiality, the effect on the public's confidence in our judicial system can be debilitating." *Sherman v. State*, 128 Wn.2d 164, 205-06, 905 P.2d 355 (1995). Thus, to obtain relief on appeal, it is *not* necessary to show that the magistrate's consideration of the case *was affected* by some personal interest or bias. "The importance of the appearance of fairness has resulted in the recognition that it is necessary only to show an interest which might have influenced [the magistrate] and not that it actually so affected him." *Buell v. City of Bremerton*, 80 Wn.2d 518, 523, 495 P.2d 1358 (1972). *Accord*

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[33] "Caesar demanded that his wife should not only be virtuous, but beyond suspicion, and the state should not be any less exacting with its judicial officers, in whose keeping are placed not only the financial interests, but the honor, the liberty, and the lives of its citizens. . . .'Next in importance to the duty of rendering a righteous judgment, is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge.'"

Nationscapital Mortgage Corp. v. DFI, 133 Wn. App. 723, ¶ 101, 137 P.3d 78 (2006);[34] *Human Rights Comm'n*, 87 Wn.2d at 811; *Dimmel v. Campbell,* 68 Wn.2d 697, 699, 414 P.2d 1022 (1966).[35]

d. **The Interest That Taints a Judge's Appearance of Impartiality Need Not Be a Direct Interest**.

The common law rule requiring disqualification of a judge is triggered by any interest or bias which makes it appear that the judge is unlikely to be a neutral arbiter. "An interest that is alleged to create bias or unfairness need not be direct or obvious." *Id.* at 807.

> ***Any interest***, the probable and natural tendency of which is to create a bias in the mind of the judge for or against a party to the suit, is sufficient to disqualify. . . . Pecuniary interest in the result of the suit is not the only disqualifying interest.

Human Rights Comm'n, 87 Wn.2d at 807-08 (emphasis added).

The broad scope of disqualifying indirect interests is well illustrated by cases such as *Swift v. Island County*, 87 Wn.2d 348, 552 P.2d 175 (1976)[36]

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[34] "[I]t is not necessary to show that a decision maker's bias actually affected the outcome, only that it could have."

[35] Even though the "record does not give the slightest hint that the forthright trial judge" was biased or prejudiced, nevertheless the judge properly granted a new trial because his association with a former law partner created an appearance of partiality . . . ."

[36] There a Commissioner voted on a plan to approve a preliminary plat for the Keystone Shores Division No. 2 portion of a real estate development project. The Commissioner was chairman of a bank that was helping to finance the development of an adjacent set of lots called the Keystones Estates Division. Neither the Commissioner nor the bank he chaired had any ownership interest in the platting of the shoreline property. But by voting to approve that plat, he indirectly increased the value of the neighboring inland lots, making them more marketable, and thus indirectly benefiting his bank. This indirect "enhancement" of the value of his bank's project was held "sufficient to bring the doctrine of appearance of fairness into play." *Id.* at 362. The Court concluded that the plat approval was "void for lacking an appearance of fairness."

and *Hayden v. Port Townsend*, 28 Wn. App. 192, 622 P.2d 1291 (1981).[37]

e. **The Test for Recusal Is An Objective Standard. Any Reasonable Person Would Question the Trial Judge's Ability to Be Impartial Towards the DeCourseys Since They Had Engaged in An Ongoing Campaign To Inform The Public That Windermere Real Estate Brokers – Just Like His Wife – Were Regularly Committing Unethical and Illegal Acts.**

While the trial judge may have believed that he was, and could continue to be, impartial towards the DeCourseys, that is not relevant. *Swift v. Island County,* 87 Wn.2d 348, 361, 552 P.2d 175 (1976).[38] The test is what a reasonable and disinterested person would think. As the Court said in *State v. Gamble,* 168 Wn.2d 161, 187, 225 P.3d 973 (2010):

> [A] judicial proceeding is valid only if a reasonably prudent disinterested observer would conclude that the parties received a fair, impartial and neutral hearing. . . Under the Code of Judicial Conduct, designed to provide guidance for judges, "[j]udges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned."

Accord In re Sanders, 159 Wn.2d 517, 524-25, 145 P.3d 1208 (2006); *Tatham v. Rogers,* 170 Wn. App. 76, 94, 283 P.3d 583 (2012).

By the time they first appeared before him as defendants in the LP case, the DeCourseys had already been conducting an anti-Windermere public information campaign for years. They had been collecting data

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[37] The *Hayden* Court examined the city planning commission's approval of a rezone decision for a piece of property that a bank wanted to build on. One of the members of the city planning commission was employed by that bank. Even though he did not participate in the vote to approve the rezone, he urged other members of the commission to approve it. The bank benefited from the rezone, even though the commission member did not. This Court found that even this very attenuated benefit which accrued to the commission member's employer was enough to require it to vacate the rezoning decision for violation of the appearance of fairness doctrine.

[38] "It is the possible range of mental impressions made upon the public's mind, rather than the intent of the acting governmental employee, that matters."

about cases where Windermere "victims" had successfully sued Windermere real estate agents and brokers. They had successfully sued *their own* former Windermere agent, Paul Stickney. They had publicized the fact that Windermere employed felons as real estate brokers, and that agencies such as the Department of Licensing were not taking any enforcement action against Windermere. The trial judge *knew all these things right from the very start* of the case. CP 50, 5918-19, 5951-5956.

Under these circumstances, any reasonable person would seriously doubt the judge's ability to be fair to the DeCourseys. Judges are human beings. Like anyone else, (1) when the company the judge's spouse works for is attacked; and (2) when the employees doing the exact same job as the judge's spouse are vilified and accused of "routinely" doing unethical and illegal things;[39] a judge will necessarily see that attack as an attack on his spouse as well. A reasonable person would have grave doubts as to the judge's ability not to be biased against the party making such accusations. It is obviously reasonable to think that the judge will react in this fashion:

- You have accused my spouse's co-workers of being crooks, cheats, felons, and unscrupulous law breakers;
- You have accused the people -- such as my wife -- who work for Windermere as regularly and routinely engaging in such misconduct;
- Thus you have accused my wife of being an unscrupulous, unethical, lawbreaker.

[39] Moreover, this Court, in its prior opinion issued in Windermere's appeal, affirmed the trial court's public interest finding noting that there was substantial evidence to show that the Windermere agent in that case had deceived many other Windermere clients: "[B]ecause Stickney recommended only Birgh to more than 30 clients, the DeCourseys showed 'a real and substantial potential for repetition.'" CP 1751, COA No. 62912-3-I, Slip Opinion, at 20.

A judge who thinks a party has defamed his spouse in such a manner is going to be hard pressed to be impartial towards such a party.

Every objectively reasonable observer would doubt such a judge's ability to be impartial in such a case. Even putting aside the judge's reason to be economically concerned about the effect that the party's negative publicity campaign is likely to have on his wife's employer, on his wife's income, and thus on his own community property share of his wife's income – the natural human tendency to be biased against people who attack one's close family members makes it impossible for such a judge to act with the requisite appearance of impartiality. Under the test of objective reasonableness employed by both the Canons of Judicial Conduct and over a century of Washington case law, the trial judge's refusal to recuse himself violated the appearance of fairness doctrine. Here, as in *Buell, Hayden, Swift, Human Rights Commission,* and *Tatham*, all the decisions made by the trial judge must be vacated and the case must go back for hearing before a new judge.

2. THE TRIAL JUDGE'S FAILURE TO RECUSE HIMSELF VIOLATED DUE PROCESS BECAUSE HE HAD A PERSONAL PECUNIARY INTEREST IN THE CONTINUED SUCCESS OF HIS WIFE'S EMPLOYER, AND THE DECOURSEYS CAMPAIGN THREATENED TO HARM THE EMPLOYER'S PUBLIC IMAGE AND TO REDUCE HIS WIFE'S INCOME.

a. <u>Disqualification of a Judge on Due Process Grounds Does Not Require Proof of Actual Bias</u>.

"The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." *Tatham v. Rogers,*

170 Wn. App. at ¶ 23, citing *Marshall v. Jerricho, Inc.*, 446 U.S. 238, 242 (1980). This neutrality requirement "preserves both the appearance and reality of fairness, 'generating the feeling, so important to a popular government, that justice has been done,' [citation] by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." *Marshall*, 446 U.S. at 242. As with the appearance of fairness doctrine, "This stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weight the scales of justice equally between contending parties." *Id.* at 243. Reliance upon a judge's own subjective inquiry into the existence of his own possible actual bias does not provide "adequate protection against a judge who simply misreads or misapprehends the real motives at work in deciding the case." *Capperton v. A. T. Massey Coal Co.,* 556 U.S. 868, 883 (2009). Therefore, "the Due Process Clause has been implemented by objective standards that do not require proof of actual bias." *Id.*

b. <u>Recusal Is Constitutionally Required When A Magistrate Has Some Self Interest Which Offers a Temptation to Depart From Total Neutrality, Even If The Interest Falls Short of Being a Direct Personal Financial Interest</u>.

"[J]udges must recuse themselves when they have 'a direct, personal, substantial pecuniary interest' in a case." *Tatham*, 170 Wn. App. at ¶ 24. Beyond such "direct" interests, the U.S. Supreme Court has identified "additional bases for recusal required by due process." *Id.* Even when judges have "financial interests falling short of what would be considered

personal or direct," due process can still require judicial recusal. *Id.* citing *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 822 (1986). While such an interest "cannot be defined with precision," *In re Murchison,* 349 U.S. 133, 136 (1955), a "reasonable formulation" of the proper test is whether "the situation is one which would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true." *Ward v. Monroeville*, 409 U.S. 57, 60 (1972).[40]

The present case presents a clear due process violation because the case before the trial judge offered him the opportunity to advance his own personal financial interests by protecting his wife's employer from economic harm. The judge was confronted with litigants who were dedicated to an ongoing publicity campaign attacking the integrity of Windermere Real Estate. To the extent their campaign succeeded in persuading the public that Windermere brokers and agents routinely engaged in unethical practices, the inevitable effect of such success would be to damage Windermere's business by persuading potential customers *not* to do business with Windermere. Fewer customers would inevitably

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[40] In *Monroeville* the mayor of the village also presided over the mayoral court which heard minor criminal cases. Unlike the judge in *Tumey v. Ohio*, 273 U.S. 510 (1927), whose own salary was partially dependent upon the revenue collected from criminal fines that the judge imposed, the judge in *Monroeville* did not *personally* derive any financial benefit from finding the accused guilty and imposing a fine. *But the village* derived a benefit from such fines, because "[a] major part of village income is derived from the fines, forfeitures, costs, and fees imposed by him in his mayor's court." *Monroeville,* 409 U.S. at 58. The Court held that the mayor's responsibility for village finances rendered him vulnerable to the "possible temptation" to impose criminal fines upon criminal defendants coming before him in order to garner income for the village, and therefore the defendant was denied due process. *Id.* at 60. Thus *Monroeville* teaches that even a financial incentive to benefit *someone else* is sufficient to require recusal on due process grounds.

mean that Windermere brokers like the judge's wife would earn fewer commissions. Thus, the DeCourseys' campaign could be expected to reduce the trial judge's marital income.[41]

If LP were to prevail in the lawsuit – as it ultimately did – then the DeCourseys would have to pay LP hundreds of thousands of dollars. That would leave them a lot less money with which to finance their anti-Windermere publicity campaign. So it would be better for the trial judge's wife, and better for the trial judge, if the DeCourseys lost this case to LP. His personal financial interest in seeing to it that the business of his wife's employer prospered, gave the trial judge a financial stake in the case before him. The case should have been heard by a judge who would not have stood to benefit from a decision imposing a hefty judgment against the DeCourseys, thereby depriving them of funds they could use to finance their campaign against Windermere, the judge's wife's employer. Thus, the judge's failure to recuse himself violated due process.

While decided upon statutory,[42] rather than constitutional grounds, the decision in *Potashnick v. Port City Construction*, 609 F.2d 1101 (5th Cir. 1980) is analogous and highly instructive. In that case the defendant argued that the trial judge should disqualify himself because his father was a partner in the law firm representing the plaintiff. The judge declined to

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[41] In its promotional recruitment materials Windermere boasts that brokers who work for Windermere will benefit by increasing their business. Windermere asserts that it will provide them with help "attracting new clients, marketing listings, lead generation, client retention and cultivating referrals." CP 4870. Thus Windermere asserts that its good name helps brokers to make more sales and earn more commissions.

recuse himself and ruled in favor of the plaintiff. The trial judge felt recusal was unnecessary because (1) his father did not participate in the case in any way; and (2) his father's income that he received from the law firm was *not* affected by whether or not the law firm won or lost that particular case. The judge's father got paid the same amount, regardless of how the judge decided the case. *Id.* at 1112-13. Nevertheless, the Fifth Circuit held that the judge should have recused himself because his father *did* stand to benefit in a general business reputational way from a victory for his law firm.

> Apart from the potential financial interests at stake, a win or loss in ***any lawsuit could affect a partner's interest in his firm's reputation, its relationship with its clients, and its ability to attract new clients***. The language of [the recusal statute] does not require the judge to investigate whether his lawyer-relative's interest will in fact be affected by the outcome of the proceeding. Instead, ***the statute requires automatic disqualification when the judge in a proceeding knows of his relative's interest, and the outcome of the proceeding may potentially affect that interest***.

Potashnick, 609 F.2d at 1113-14 (emphasis added).

The present case is extremely similar, but the facts here create an even more compelling case for judicial recusal. In this case the judge's relative was his spouse instead of his father. Normally a son owns no share of income earned by his father; but in a marital community property state a husband has a community property interest in his wife's earned income. So in this case, the judge's own financial interest could potentially be affected by the outcome of the proceeding, because his decision could

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[42] The decision turned upon the application of a federal statute, 28 U.S.C. § 455(b)(5)(iii).

deprive the DeCourseys of funds they could use to attack the reputation of his wife's employer. Recusal was required here, as it was in *Potashnick*.

c. <u>In *Liljeberg* the Supreme Court *Rejected* The Contention That Recusal Was Not Required Because the University, With Whom the Judge Was Affiliated, Was Not A Party to the Case. In This Case, Even Though Windermere Was Not A Party to the Case, It Stood To Benefit From a Decision Against the DeCourseys, And So Did The Trial Judge and His Wife</u>.

The trial judge justified his decision not to recuse himself on the ground that no one in the case was seeking relief against Windermere. CP 2925 (Appendix E). But that hardly solves the problem. Recusal of the judge is constitutionally required if the judge has a direct interest in how the case is decided.[43]

Liljeberg v. Health Services Corporation, 486 U.S. 847 (1988) is directly on point. In that case the trial judge served on the Board of Trustees for Loyola University. The University was not a party in the case before the judge, but it was involved in negotiations to sell a large parcel of land to Liljeberg, and Liljeberg was a party. Liljeberg intended to build a hospital on the land. But he had a dispute with Health Services over ownership of a hospital "certificate of need" issued by the State of Louisiana. Health Services filed a declaratory judgment action against Liljeberg seeking a ruling that it owned the certificate. Only after the trial judge had issued a decision in Liljeberg's favor did Health Services discover that the trial judge was a University trustee.

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[43] "An interest is sufficiently 'direct' if the outcome of the challenged proceeding substantially advances the judge's opportunity to attain some desired goal even if that

Health Services then moved for an order vacating the judgment against it on the ground that the judge should have recused himself. The trial judge denied the motion, ruling that there was no reason for him to recuse. But the Supreme Court disagreed and vacated the judgment. In his defense, the trial judge offered *exactly* the same kind of reasoning that the trial judge offered in the present case:

> First, Loyola University ***was not and is not a party to this litigation***, nor was any of its real estate the subject matter of this controversy. Second, Loyola University is a non-profit, educational institution and ***any benefits [inuring] to that institution would not benefit any individual personally***. Finally, and most significantly, this judge never served on either the Real Estate or Executive Committees of the Loyola University Board of Trustees. Thus, ***this judge had no participation of any kind in negotiating Loyola University's real estate transactions*** and, in fact, had no knowledge of such transactions.

Liljeberg, 486 U.S. at 867 n.15 (emphasis added). The Supreme Court rejected all of these reasons, held the trial judge had "an obvious conflict of interest," vacated the judgment in favor of Liljeberg, and ordered a new trial before a new judge.

In the present case, Windermere, like Loyola University, "was not and is not a party to this litigation . . . ." *Id.* at 867 n.15. Nevertheless, it stood to benefit from a decision in favor of LP, just as Loyola benefited from the decision in favor of Liljeberg. A ruling in favor of Liljeberg did not directly place money in Judge Collins' pocket. But it made it far more likely that Liljeberg would place money in the University's pocket, and

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goal is not actually attained in that proceeding." *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813, 830 (1986) (Brennan, J., concurring).

the judge was a University trustee. Similarly, in the present case, a decision in favor of LP did not place money directly in Windermere's pocket, or in the trial judge's wife's pocket. But Windermere employees such as the judge's wife, benefited from a decision in favor of LP because it took money out of the DeCourseys' pockets, thereby reducing the funds available for their anti-Windermere campaign, which would cause Windermere to suffer a loss of customers and revenue. Thus, indirectly, the trial judge's decision caused benefits to flow to Windermere real estate brokers, such as the judge's wife, and thus to himself as well. Finally, the fact that the judge's wife had no personal participation in the transaction between Windermere agent Paul Stickney and the DeCourseys, is just as irrelevant as the fact that the *Liljeberg* trial judge did not participate in the real estate transaction from which the University stood to gain.

Under these circumstances, it comes as no surprise that Carol DeCoursey said to the trial judge, "we can understand that you're being a bit protective. . . ." RP 11/16/12, at 34. She candidly acknowledged that she and her husband were doing their "best to expose [Windermere's] unlawful actions and the corruption of the government agencies that allows them to have, you know, an unfair place in the marketplace." *Id.* She told the trial court: "I understand your wife works for them and you love her and she loves you and all of that, and we're very sympathetic to that. But really, sir, it doesn't look good and it doesn't feel good . . . ." *Id.* at 33. She was entirely right. The trial judge had a personal incentive

to protect Windermere and his wife from the activities of the DeCourseys. The fact that Windermere was not a party to the case is irrelevant just as the University's nonparty status was irrelevant in *Liljeberg*. In both cases the trial judge's failure to recuse himself was a violation of due process.

3. BECAUSE LP REPUDIATED THE CONTRACT, THE DECOURSEYS WERE NO LONGER OBLIGATED TO PERFORM UNDER IT.

If this Court finds that the trial judge erred by refusing to recuse himself, it will not be necessary to decide the following issue regarding the entry of a summary judgment on LP's breach of contract claim. If the Court does reach this issue, the DeCourseys ask it to reverse and remand with directions to enter partial summary judgment in their favor on the breach of contract claim.

"Repudiation of a contract by one party may be treated by the other as a breach which will excuse the other's performance." *CKP, Inc. v. GRS Construction Co.*, 63 Wn. App. 601, 620, 821 P.2d 63 (1991). *Accord Hemisphere Loggers v. Firchau,* 7 Wn. App. 232, 234, 499 P.2d 85 (1972). In *CKP* a general contractor repeatedly threatened to withhold payment to its subcontractor unless the latter agreed to modify their contract. Since "that was a repudiation by [the general contractor] of its contract," this Court held that the subcontractor was justified in walking off the job. *Id.* Accordingly, the general contractor could not recover against the subcontractor for breach of contract, because the subcontractor was no longer bound by the contract.

After the jury in the Windermere case had returned a $522,200 verdict in favor of the DeCourseys, in December of 2008 LP entered into a contract in which they promised to continue to represent the DeCourseys in Windermere's anticipated appeal and to "forbear on demanding payment of the balance of the amount owed [to the law firm] until payment on the judgment or settlement with Windermere." CP 1420, 633, 1949. That promise to forbear was incorporated into the fee agreement drafted by LP. CP 633, 3500. But when LP filed suit against the DeCourseys on October 5, 2011, *it broke its promise to forbear* on demanding payment until Windermere had paid up, because Windermere had not yet paid the judgment. As of October 5, 2011 Windermere *had not paid one dime* of the judgment to the DeCourseys.

Thus LP repudiated its contract with the DeCourseys. A clearer repudiation cannot be imagined. They promised not to attempt to collect payment until a specific event transpired and then they brought suit to collect payment before that event had occurred. This repudiation by LP excused the DeCourseys from performing what they had promised under the contract. *CKP, Inc.*, 63 Wn. App. at 620.

The contract between LP and the DeCourseys simply ceased to exist once LP repudiated it. "Whether facts have been established showing repudiation of a contract is usually a question for the jury." *Hemisphere Loggers*, 7 Wn. App. at 234. Like any other fact, however, if it is undisputed there is no need for a trial to determine it. Here it is undisputed

that LP sued the DeCourseys and thereby demanded further payment before Windermere had paid off the judgment it owed to the DeCourseys.

The Superior Court directed that "judgment shall be entered in favor of plaintiff and against defendants Mark and Carol DeCoursey *for breach of contract* in the amount of $422,675.45." CP 5526. But here there was a prior repudiation of the contract by LP which, as a matter of law, relieved the DeCourseys of any duty to perform under the contract. Thus, the Superior Court erred and should have granted summary judgment *on the breach of contract claim* to the DeCourseys.

If this Court vacates the decision on the breach of contract claim, on remand LP would still be free to litigate its claim for *quantum meruit* recovery, which the trial court did not reach. *See* CP 4-5.[44]

G. CONCLUSION

For the reasons stated in sections 1-2, appellants ask this Court to vacate the judgment and all of the trial court's rulings made below, and to remand with directions that a new judge be assigned to hear this case.

For the reasons stated in section 3, the DeCourseys ask this Court to vacate the judgment entered below, and to remand for entry of partial summary judgment in their favor on LP's breach of contract claim..

DATED this 7th day of August, 2013.

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[44] The question would then become, having won and successfully defended a jury verdict of $522,200, what is a reasonable amount of compensation that the law firm should receive for having performed this work? On remand the DeCourseys would be free to continue to press their contention that, whatever the proper amount is, it is far less than the $639,232.26 which LP charged them. CP 5525.

CARNEY BADLEY SPELLMAN, P.S.

By _____
James E. Lobsenz, WSBA No. 8787
Attorneys for Appellants

APPENDIX A

Properties listed by

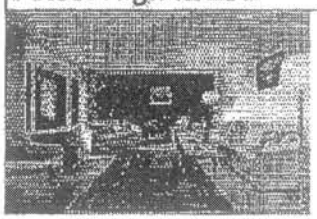
Claire Eadie

Edmonds

- Email: ceadie@windermere.com
- Website:
- Cell/Direct: (206) 714-2920

1 listings found

Price: High to Low



North City Area Condo/Townhouse
$199,950

17900 23rd Lane Ne 204 Shoreline, WA 98155

View Details

- Year Built: 1976
- MLS#: 285638
- Status: Pending

- Bedrooms: 3
- Bathrooms: 1.75
- Square Feet: 1393
- Lot Size: 2.27 acres

APPENDIX B

PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

PDC FORM **F-1** (1/12)

PERSONAL FINANCIAL AFFAIRS STATEMENT

PDC OFFICE USE
100446662

Refer to instruction manual for detailed assistance and examples.

Deadlines: Incumbent elected and appointed officials – by April 15. Candidates and others – within two weeks of becoming a candidate or being newly appointed to a position.

SEND REPORT TO PUBLIC DISCLOSURE COMMISSION

DOLLAR CODE	AMOUNT
A	$1 to $3,999
B	$4,000 to $19,999
C	$20,000 to $39,999
D	$40,000 to $99,999
E	$100,000 or more

Covers: 2011

Received: 03-24-2012

Last Name	First	Middle Initial
EADIE	RICHARD	D

Mailing Address (Use PO Box or Work Address)
516 THIRD AVENUE, C-203

City	County	Zip + 4
SEATTLE	KING	98104

Names of immediate family members, including registered domestic partner. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse or registered domestic partner. See F-1 manual for details.

CLAIRE EADIE SP

Filing Status (Check only one box.)

- [X] An elected or state appointed official filing annual report
- [ ] Final report as an elected official. Term expired: _____
- [ ] Candidate running in an election: month _____ year _____
- [ ] Newly appointed to an elective office
- [ ] Newly appointed to a state appointive office
- [ ] Professional staff of the Governor's Office and the Legislature

Office Held or Sought

Office title: SUPERIOR COURT JUDGE

County, city, district or agency of the office, name and number: KING CO SUPERIOR COURT

Position number: 33

Term begins: 01-01-2009 ends: 12-31-2012

1 INCOME

List each employer, or other source of income (pension, social security, legal judgment, etc.) from which you or a family member, including registered domestic partner, received $2,000 or more during the period. (Report interest and dividends in Item 3 on reverse)

Show Self (S) Spouse (SP/DP) Dependent (D)	Name and Address of Employer or Source of Compensation	Occupation or How Compensation Was Earned	Amount: (Use Code)
S	KING COUNTY SUPERIOR COURT 516 3RD AVE. C-203 SEATTLE WA 98104-2381	SUPERIOR COURT JUDGE	E
SP	WINDERMERE REAL ESTATE - EDMONDS 210 5TH AVE. SOUTH EDMONDS 98 WA	REAL ESTATE AGENT COMMISSIONS	B

Check Here [X] If continued on attached sheet

2 REAL ESTATE

List street address, assessor's parcel number, or legal description AND county for each parcel of Washington real estate with value of over $10,000 in which you or a family member, including registered domestic partner, held a personal financial interest during the reporting period. (Show partnership, company, etc. real estate on F-1 supplement.)

Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser	Nature and Amount (Use Code) of Payment or Consideration Received
King County 2534 N.W. 194th Pl. Shoreline, WA 98177	E	Berthold E. Breitling 2520 N.W. 194th Pl. Shoreline WA 98177	E

Property Purchased or Interest Acquired		Creditor's Name/Address	Payment Terms	Security Given	Mortgage Amount - (Use Code) Original	Current
All Other Property Entirely or Partially Owned 1455 N. W. 188TH ST. , SHORELINE, KING COUNTY, WA Check here [X] if continued on attached sheet	E	Chase Bank 1401 5TH AVE. SEATTLE WA 98101	30 YRS. @ 6. 75%	D. O. T.	E	E

CONTINUE ON NEXT PAGE

PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

PDC FORM **F-1** (11/08)

PERSONAL FINANCIAL AFFAIRS STATEMENT

PDC OFFICE USE
100397205

Refer to instruction manual for detailed assistance and examples.

Deadlines: Incumbent elected and appointed officials – by April 15. Candidates and others – within two weeks of becoming a candidate or being newly appointed to a position.

SEND REPORT TO PUBLIC DISCLOSURE COMMISSION

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Covers: 2010

Received: 04-10-2011

Last Name	First	Middle Initial
EADIE	RICHARD	D

Mailing Address (Use PO Box or Work Address)
516 THIRD AVENUE, C-203

City	County	Zip + 4
SEATTLE	KING	98104

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CLAIRE EADIE SP

Filing Status (Check only one box.)

- [X] An elected or state appointed official filing annual report
- [ ] Final report as an elected official. Term expired: _____
- [ ] Candidate running in an election: month _____ year _____
- [ ] Newly appointed to an elective office
- [ ] Newly appointed to a state appointive office
- [ ] Professional staff of the Governor's Office and the Legislature

Office Held or Sought

Office title: SUPERIOR COURT JUDGE

County, city, district or agency of the office,
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Check Here [X] if continued on attached sheet

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Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser		Nature and Amount (Use Code) of Payment or Consideration Received	
Property Purchased or Interest Acquired		**Creditor's Name/Address**	**Payment Terms**	**Security Given**	**Mortgage Amount - (Use Code) Original / Current**
All Other Property Entirely or Partially Owned 1455 N. W. 188TH ST. , SHORELINE, KING COUNTY, WA Check here [X] if continued on attached sheet	E	Chase Bank 1401 5TH AVE. SEATTLE WA 98101	30 YRS. @ 6. 75%	D. O. T.	E / E

CONTINUE ON NEXT PAGE

PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

PDC FORM **F-1** (11/08)

PERSONAL FINANCIAL AFFAIRS STATEMENT

PDC OFFICE USE
100342812

Refer to instruction manual for detailed assistance and examples.

Deadlines: Incumbent elected and appointed officials – by April 15. Candidates and others – within two weeks of becoming a candidate or being newly appointed to a position.

SEND REPORT TO PUBLIC DISCLOSURE COMMISSION

DOLLAR CODE	AMOUNT
A	$1 to $3,999
B	$4,000 to $19,999
C	$20,000 to $39,999
D	$40,000 to $99,999
E	$100,000 or more

Covers: 2009

Received: 04-15-2010

Last Name	First	Middle Initial
EADIE	RICHARD	D

Mailing Address (Use PO Box or Work Address)
516 THIRD AVENUE, C-203

City	County	Zip + 4
SEATTLE	KING	98104

Names of immediate family members, including registered domestic partner. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse or registered domestic partner. See F-1 manual for details.

CLAIRE EADIE SP

Filing Status (Check only one box.)

- [X] An elected or state appointed official filing annual report
- [ ] Final report as an elected official. Term expired: _____
- [ ] Candidate running in an election: month _____ year _____
- [ ] Newly appointed to an elective office
- [ ] Newly appointed to a state appointive office
- [ ] Professional staff of the Governor's Office and the Legislature

Office Held or Sought

Office title: SUPERIOR COURT JUDGE

County, city, district or agency of the office, name and number: KING CO SUPERIOR COURT

Position number: 33

Term begins: 01-01-2009 ends: 12-31-2012

1 INCOME

List each employer, or other source of income (pension, social security, legal judgment, etc.) from which you or a family member, including registered domestic partner, received $2,000 or more during the period. (Report interest and dividends in item 3 on reverse)

Show Self (S) Spouse (SP/DP) Dependent (D)	Name and Address of Employer or Source of Compensation	Occupation or How Compensation Was Earned	Amount: (Use Code)
S	KING COUNTY SUPERIOR COURT 516 3RD AVE. C-203 SEATTLE WA 98104-2381	SUPERIOR COURT JUDGE	E
SP	WINDERMERE REAL ESTATE - EDMONDS 210 5TH AVE. SOUTH EDMONDS WA 98020	REAL ESTATE AGENT COMMISSIONS	D

Check Here [X] If continued on attached sheet

2 REAL ESTATE

List street address, assessor's parcel number, or legal description AND county for each parcel of Washington real estate with value of over $10,000 in which you or a family member, including registered domestic partner, held a personal financial interest during the reporting period. (Show partnership, company, etc. real estate on F-1 supplement.)

Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser	Nature and Amount (Use Code) of Payment or Consideration Received

Property Purchased or Interest Acquired		Creditor's Name/Address	Payment Terms	Security Given	Mortgage Amount - (Use Code) Original	Current
All Other Property Entirely or Partially Owned 1455 N. W. 188TH ST. , SHORELINE, KING COUNTY, WA Check here [X] if continued on attached sheet	E	Chase Bank 1401 5TH AVE. SEATTLE WA 98101	30 YRS. @ 6. 75%	D. O. T.	E	E

CONTINUE ON NEXT PAGE

PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

PDC FORM **F-1** (11/08)

PERSONAL FINANCIAL AFFAIRS STATEMENT

PDC OFFICE USE
100293280

Refer to instruction manual for detailed assistance and examples.

Deadlines: Incumbent elected and appointed officials – by April 15. Candidates and others – within two weeks of becoming a candidate or being newly appointed to a position.

SEND REPORT TO PUBLIC DISCLOSURE COMMISSION

DOLLAR CODE	AMOUNT
A	$1 to $3,999
B	$4,000 to $19,999
C	$20,000 to $39,999
D	$40,000 to $99,999
E	$100,000 or more

Covers: 2008

Received: 04-03-2009

Last Name	First	Middle Initial
EADIE	RICHARD	D

Mailing Address (Use PO Box or Work Address)
516 THIRD AVENUE, C-203

City	County	Zip + 4
SEATTLE	KING	98104

Names of immediate family members, including registered domestic partner. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse or registered domestic partner. See F-1 manual for details.

CLAIRE EADIE SP

Filing Status (Check only one box.)

- [X] An elected or state appointed official filing annual report
- [ ] Final report as an elected official. Term expired: _____
- [ ] Candidate running in an election: month _____ year _____
- [ ] Newly appointed to an elective office
- [ ] Newly appointed to a state appointive office
- [ ] Professional staff of the Governor's Office and the Legislature

Office Held or Sought

Office title: SUPERIOR COURT JUDGE

County, city, district or agency of the office, name and number: KING CO SUPERIOR COURT

Position number: 33

Term begins: 01-01-2009 ends: 12-31-2012

1 INCOME

List each employer, or other source of income (pension, social security, legal judgment, etc.) from which you or a family member, including registered domestic partner, received $2,000 or more during the period. (Report interest and dividends in item 3 on reverse)

Show Self (S) Spouse (SP/DP) Dependent (D)	Name and Address of Employer or Source of Compensation	Occupation or How Compensation Was Earned	Amount: (Use Code)
S	KING COUNTY SUPERIOR COURT 516 3RD AVE. C-203 SEATTLE WA 98104-2381	SUPERIOR COURT JUDGE	E
SP	WINDERMERE REAL ESTATE - EDMONDS 210 5TH AVE. SOUTH EDMONDS WA 98020	REAL ESTATE AGENT COMMISSIONS	D

Check Here [X] If continued on attached sheet

2 REAL ESTATE

List street address, assessor's parcel number, or legal description AND county for each parcel of Washington real estate with value of over $10,000 in which you or a family member, including registered domestic partner, held a personal financial interest during the reporting period. (Show partnership, company, etc. real estate on F-1 supplement.)

Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser		Nature and Amount (Use Code) of Payment or Consideration Received	
Property Purchased or Interest Acquired		**Creditor's Name/Address**	**Payment Terms**	**Security Given**	**Mortgage Amount - (Use Code) Original / Current**
All Other Property Entirely or Partially Owned 1455 N. W. 188TH ST. , SHORELINE, KING COUNTY, WA Check here [X] if continued on attached sheet	E	WASHINGTON 1401 5TH AVE. SEATTLE WA 98101	30 YRS. @ 6. 75%	D. O. T.	E / E

CONTINUE ON NEXT PAGE

PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

PDC FORM **F-1** (1/08)

PERSONAL FINANCIAL AFFAIRS STATEMENT

PDC OFFICE USE
1001263421

Refer to instruction manual for detailed assistance and examples.

Deadlines: Incumbent elected and appointed officials – by April 15. Candidates and others – within two weeks of becoming a candidate or being newly appointed to a position.

SEND REPORT TO PUBLIC DISCLOSURE COMMISSION

DOLLAR CODE	AMOUNT
A	$1 to $3,999
B	$4,000 to $19,999
C	$20,000 to $39,999
D	$40,000 to $99,999
E	$100,000 or more

Covers: 2007

Received: 04-13-2008

Last Name	First	Middle Initial
EADIE	RICHARD	D

Mailing Address (Use PO Box or Work Address)
516 THIRD AVENUE, C-203

City	County	Zip + 4
SEATTLE	KING	98104

Names of immediate family members. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse. See F-1 manual for details.
CLAIRE EADIE SP

Filing Status (Check only one box.)

- [X] An elected or state appointed official filing annual report
- [ ] Final report as an elected official. Term expired: _____
- [ ] Candidate running in an election: month _____ year _____
- [ ] Newly appointed to an elective office
- [ ] Newly appointed to a state appointive office
- [ ] Professional staff of the Governor's Office and the Legislature

Office Held or Sought
Office title: SUPERIOR COURT JUDGE

County, city, district or agency of the office, name and number: KING CO SUPERIOR COURT
Position number: 33
Term begins: 01-01-2009 ends: 12-31-2012

1 INCOME

List each employer, or other source of income (pension, social security, legal judgment, etc.) from which you or a family member received $2,000 or more during the period. (Report interest and dividends in Item 3 on reverse)

Show Self (S) Spouse (SP) Dependent (D)	Name and Address of Employer or Source of Compensation	Occupation or How Compensation Was Earned	Amount: (Use Code)
S	KING COUNTY SUPERIOR COURT 516 3RD AVE. C-203 SEATTLE WA 98104-2381	SUPERIOR COURT JUDGE	E
SP	WINDERMERE REAL ESTATE - EDMONDS 210 5TH AVE. SOUTH EDMONDS WA 98020	REAL ESTATE AGENT COMMISSIONS	D

Check Here [X] if continued on attached sheet

2 REAL ESTATE

List street address, assessor's parcel number, or legal description AND county for each parcel of Washington real estate with value of over $10,000 in which you or a family member held a personal financial interest during the reporting period. (Show partnership, company, etc. real estate on F-1 supplement.)

Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser	Nature and Amount (Use Code) of Payment or Consideration Received

Property Purchased or Interest Acquired		Creditor's Name/Address	Payment Terms	Security Given	Mortgage Amount - (Use Code) Original	Current
All Other Property Entirely or Partially Owned 1455 N. W. 188TH ST. , SHORELINE, KING COUNTY, WA Check here [X] if continued on attached sheet	E	WASHINGTON 1401 5TH AVE. SEATTLE WA 98101	30 YRS. @ 6. 75%	D. O. T.	E	E

CONTINUE ON NEXT PAGE

PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

PDC FORM **F-1** (2/07)

PERSONAL FINANCIAL AFFAIRS STATEMENT

POST MARK / PDC OFFICE USE

RECEIVED DATE FILED PDC APR 16 2007

Refer to instruction manual for detailed assistance and examples.

Deadlines: Incumbent elected and appointed officials -- by April 15. Candidates and others -- within two weeks of becoming a candidate or being newly appointed to a position.

SEND REPORT TO PUBLIC DISCLOSURE COMMISSION

DOLLAR CODE	AMOUNT
A	$1 to $2,999
B	$3,000 to $14,999
C	$15,000 to $29,999
D	$30,000 to $74,999
E	$75,000 or more

Last Name	First	Middle Initial
EADIE	RICHARD	D

Mailing Address (Use PO Box or Work Address): 516 THIRD AVE. C-203

City: SEATTLE County: KING Zip + 4: 98104

Names of immediate family members. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse. See F-1 manual for details.

Filing Status (Check only one box.)

- [X] An elected or state appointed official filing annual report
- [ ] Final report as an elected official. Term expired: _____
- [ ] Candidate running in an election: month _____ year _____
- [ ] Newly appointed to an elective office
- [ ] Newly appointed to a state appointive office
- [ ] Professional staff of the Governor's Office and the Legislature

Office Held or Sought

Office title: JUDGE, SUPERIOR COURT

County, city, district or agency of the office, name and number: KING

Position number: 33

Term begins: 1/2005 ends: 1/2009

1 INCOME

List each employer, or other source of income (pension, social security, legal judgment, etc.) from which you or a family member received $1,500 or more during the period. (Report interest and dividends in Item 3 on reverse)

Show Self (S) Spouse (SP) Dependent (D)	Name and Address of Employer or Source of Compensation	Occupation or How Compensation Was Earned	Amount: (Use Code)
(S)	SOCIAL SECURITY	RETIREMENT BENEFITS	C
(SP)	WINDERMERE REAL ESTATE 210 FIFTH AVE. SO. #102 EDMONDS, WA 98020	COMMISSIONS	E

Check Here ☐ If continued on attached sheet

2 REAL ESTATE

List street address, assessor's parcel number, or legal description AND county for each parcel of Washington real estate with value of over $7,500 in which you or a family member held a personal financial interest during the reporting period. (Show partnership, company, etc. real estate on F-1 supplement.)

Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser		Nature and Amount (Use Code) of Payment or Consideration Received		
Property Purchased or Interest Acquired		**Creditor's Name/Address**	**Payment Terms**	**Security Given**	**Mortgage Amount - (Use Code) Original**	**Current**
All Other Property Entirely or Partially Owned: LOT 17 HOOD CANAL SHORES HANSVILLE, KITSAP CO.	E	NONE	N/A	N/A	N/A	N/A

Check here ☒ if continued on attached sheet

CONTINUE ON NEXT PAGE

APPENDIX C

COMPANY, ASSOC., GOVERNMENT AGENCY CONTINUED

F-1

Name EADIE, RICHARD D

3 ASSETS / INVESTMENTS - INTEREST / DIVIDENDS

C. Name and address of each company, association, government agency	Type of Account or Description of Asset	Asset Value (Use Code)	Income Amount (Use Code)
WASHINGTON MUTUAL BANK 1401 5TH AVE. SEATTLE WA 98101	IRA/COMMON STOCK	A	0
BOEING INC. 100 N. RIVERSIDE PLAZA CHICAGO, ILL. 6060	COMMON STOCK	A	0
WINDERMERE RETIREMENT PLAN AND SPOUSAL 5446 CALIFORNIA AVENUE SW, SUITE 200 SEATTLE WA 98136	MUTUAL FUND & COMMON STOCK	D	0

Check here ☐ if continued on attached sheet.

APPENDIX D

PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828
EMAIL: pdc@pdc.wa.gov

PDC FORM **F-1** SUPPLEMENT (1/12)

100446662

SUPPLEMENT PAGE

PERSONAL FINANCIAL AFFAIRS STATEMENT

03-24-2012

PROVIDE INFORMATION FOR YOURSELF, SPOUSE, REGISTERED DOMESTIC PARTNER, DEPENDENT CHILDREN AND OTHER DEPENDENTS IN YOUR HOUSEHOLD

Last Name	First	Middle Initial	DATE
EADIE	RICHARD	D	2012-03-24

A OFFICE HELD, BUSINESS INTERESTS:

Provide the following information if, during the reporting period, you, your spouse, registered domestic partner or dependents

(1) were an officer, director, general partner, trustee, or 10 percent or more owner of a corporation, non-profit organization, union, partnership, joint venture or other entity; and/or

(2) were a partner or member of a limited partnership, limited liability partnership, limited liability company or similar entity, including but not limited to a professional limited liability company.

- Legal Name: Report name used on legal documents establishing the entity.
- Trade or Operating Name: Report name used for business purposes if different from the legal name.
- Position or Percent of Ownership: The office, title and/or percent of ownership held.
- Brief Description of the Business/Organization: Report the purpose, product(s), and/or the service(s) rendered.
- Payments from Governmental Unit: If the governmental unit in which you hold or seek office made payments to the business entity concerning which you're reporting, show the purpose of each payment and the actual amount received.
- Payments from Business Customers and Other Government Agencies: List each corporation, partnership, joint venture, sole proprietorship, union, association, business or other commercial entity and each government agency (other than the one you seek/hold office) which paid compensation of $10,000 or more during the period to the entity. Briefly say what property, goods, services or other consideration was given or performed for the compensation.
- Washington Real Estate: Identify real estate owned by the business entity if the qualifications referenced below are met.

ENTITY NO. 1

Reporting For: Self [X] Spouse [ ]
Registered Domestic Partner [ ] Dependent [ ]

LEGAL NAME:
Eadie Family Trust

POSITION OR PERCENT OF OWNERSHIP
Trustee

TRADE OR OPERATING NAME:
Eadie Family Trust

ADDRESS:
1455 NW 188th St
Shoreline WA 98177

BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:
Ownership and management of real estate

PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE:

Purpose of payments	Amount (actual dollars)
	$

PAYMENTS ENTITY RECEIVED FROM OTHER GOVERNMENT AGENCIES OF $10,000 OR MORE:

Agency name:	Purpose of payment (amount not required)

PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS OF $10,000 OR MORE

Customer name:	Purpose of payment (amount not required)

WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over $20,000. List street address, assessor parcel number, or legal description and county for each parcel):

Check here [ ] if continued on attached sheet

CONTINUE PARTS B AND C ON NEXT PAGES

APPENDIX E

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

LANE POWELL, PC, Plaintiff, v. MARK AND CAROL DeCOURSEY, Defendants	NO. 11-2-34596-3 SEA ORDER DENYING DEFENDANTS' MOTION TO VACATE AND RECUSE (CLERK'S ACTION REQUIRED)

This matter is before the Court on Defendants' Motion to Vacate and Recuse noted for September 4, 2012. This motion was filed on August 9, 2012, originally noted for hearing on August 14, 2012, and accompanied by a Motion to Shorten Time, which was also noted for hearing on August 14, 2012. Plaintiff filed an objection to the motion to shorten time and argued that the underlying motion should be heard on a schedule that complied with the notice requirements for motions under civil and local rules. Defendants' Motion to Shorten Time was denied, and the underlying motion was not heard on August 14, 2012. On August 27, 2012 Defendants re-noted the Motion to Vacate and Recuse for hearing on September 4, 2012, and that motion is now before the court.

This case, *Lane Powell v. DeCoursey*, involves Plaintiff law firm's claim that Defendants have not paid the fees due Plaintiff for legal services rendered in a lawsuit involving Windermere Real Estate Company. Defendants, while they were being

Judge Richard D. Eadie
King County Superior Court
516 Third Avenue
Seattle, WA 98104
(206)296-9095

represented by Plaintiff, prevailed in that lawsuit and received a judgment in their favor that has now been satisfied as between Windermere and the parties to this action and concerning which all appellate remedies have been exhausted. As Plaintiff points out, both the Plaintiff and Defendants in this case were adverse to Windermere in the previous action.

Plaintiff's complaint in the case before this court makes no claims for relief from Windermere, nor does the Defendants' comprehensive and detailed Answer, Affirmative Defenses and Counterclaims. The present case was when filed, and remains today, an action brought by a law firm against a former client that it contends is obligated to it for unpaid fees. Windermere is not now, and never has been a party to this action.

Defendants Motion to Vacate and Recuse is DENIED.

DATED this 5th day of SEPTEMBER, 2012

Richard D. Eadie

RICHARD D. EADIE, JUDGE

Judge Richard D. Eadie
King County Superior Court
516 Third Avenue
Seattle, WA 98104
(206)296-9095

NO. 69837-1-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

LANE POWELL, PC, an Oregon professional corporation, Respondent, vs. MARK DeCOURSEY and CAROL DeCOURSEY, individually and the marital community composed thereof, Appellants.	CERTIFICATE OF SERVICE

The undersigned, under penalty of perjury of the laws of the state of Washington, hereby declares as follows:

1. I am a Citizen of the United States and over the age of 18 years and am not a party to the within cause.

2. I am employed by the law firm of Carney Badley Spellman, P.S. My business and mailing address is 701 Fifth Avenue, Suite 3600, Seattle WA 98104.

3. On August 8, 2013, I caused to be served via LEGAL MESSENGER one copy of ***BRIEF OF APPELLANTS*** on:

ROBERT M. SULKIN
MALAIKA M. EATON
HAYLEY A. MONTGOMERY
McNaul Ebel Nawrot & Helgren PLLC
600 University Street Suite 2700
Seattle WA 98101

Lily T. Laemmle
Legal Assistant