Hon. Richard D. Eadie
Plaintiff's Third Motion for Contempt
Noted for Consideration: July 6, 2012
Without Oral Argument

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LANE POWELL PC, an Oregon professional corporation, Plaintiff, v. MARK DeCOURSEY and CAROL DeCOURSEY, individually and the marital community composed thereof, Defendants.	No. 11-2-34596-3SEA PLAINTIFF'S THIRD MOTION FOR ORDER OF CONTEMPT OR RULE 37 SANCTIONS

I. RELIEF REQUESTED

Nearly two months ago, this Court held the DeCourseys in contempt for their refusal to comply with this Court's order requiring them to deposit additional funds into the Court Registry ("Registry Order") and their refusal to comply with multiple orders rejecting the DeCourseys' privilege and other discovery objections and ordering them to fully answer Lane Powell's discovery requests ("Discovery Orders"). The Court likewise held that the DeCourseys' defiance of this Court's order was "***without reasonable cause or justification*** and therefore [] ***willful and deliberate***." **Ex. A** (emphasis added). It found their conduct "has prejudiced Plaintiff's preparation of this case." *Id.* The Court not only sanctioned the DeCourseys by holding them in contempt, it further imposed monetary sanctions in the amount of Lane Powell's fees and costs in securing compliance

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with the Court's orders.

Since the Court's Contempt Order, and despite the fact that both this Court and the Court of Appeals rejected their belated request for a stay, the DeCourseys remain defiant. They have neither responded to Lane Powell's inquiries regarding their intentions for compliance nor taken any steps to comply with the Court's orders. Instead, they have continued their pattern of delay and defiance by bringing ***yet another*** motion for stay in the Court of Appeals in which they (as has become their norm) request that the Court of Appeals reconsider its previous ruling rejecting their stay motion. Lane Powell, accordingly, brings another (its third) motion for contempt and respectfully requests that this Court strike the DeCourseys' counterclaims and defenses, a sanction the DeCourseys were specifically warned would result from further noncompliance.

II. STATEMENT OF FACTS

A. Lane Powell Successfully Represents the DeCourseys But They Do Not Honor Their Agreement to Pay Lane Powell and Instead Make Far-Ranging Claims Against Lane Powell

Lane Powell agreed to represent the DeCourseys in *V&E Medical Imaging Services, Inc. v. Mark DeCoursey, et ux., et al* ("Windermere lawsuit"). *See* Dkt. 1. They, in turn, agreed to pay Lane Powell. *Id.* Despite the work performed and excellent result achieved—Lane Powell prevailed at trial, obtained a damages judgment of over $500,000 and an award of attorneys fees that included a multiplier, successfully defended the result on appeal through the Court of Appeals and the Washington Supreme Court, and obtained two further fee awards from those courts—the DeCourseys did not honor their obligation to pay Lane Powell. *Id.*

On August 3, 2011, Lane Powell filed and served an attorneys' lien in the Windermere lawsuit. **Ex. B**. The lien claimed "not less than $384,881.66" and interest on that amount that was continuing to accrue. *Id.* When no payment was forthcoming over the next two months, Lane Powell filed a complaint against the DeCourseys in early October 2011. Dkt. 1.

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On October 25, 2011, the DeCourseys counterclaimed for legal malpractice, breach of fiduciary duty, breach of contract, "Undisclosed Conflict of Interest," Consumer Protection Act violations, malicious prosecution, unjust enrichment, and extortion. Dkt. 21. Their claims are far-ranging, including 207 paragraphs of complaints regarding Lane Powell's work. *Id.* On November 3, 2011, without notice to Lane Powell and to convince the judgment debtor to pay them despite Lane Powell's lien, the DeCourseys deposited $384,881.66—the amount due ***without interest***—into the Court Registry. Dkt. 46 at 4.

B. The DeCourseys Ignore Numerous Court Orders

Since the beginning of this case, this Court has entered numerous orders, largely necessitated by the DeCourseys' misconduct. The DeCourseys, in turn, have refused to comply with a single one.

When Lane Powell discovered the DeCourseys' had kept Lane Powell in the dark as they maneuvered to obtain an $800,000 payoff of the judgment that undermined Lane Powell's legitimate lien interests, Lane Powell moved for an order requiring them to deposit additional funds into the Court Registry to cover accruing interest. Dkt. 46. The DeCourseys opposed. Dkt. 54.

On December 21, 2011, this Court granted the motion:

> [T]he Court being otherwise advised herein, now, therefore,
>
> HEREBY ORDERS, ADJUDGES AND DECREES that Plaintiff's Motion to Require Deposit of Funds Into Court Registry is GRANTED. Defendants are directed to deposit an amount no less than $57,036.30 into the Registry of the Court immediately and in no event later than ten (10) days from the entry of this Order.

Ex. C. Thus, under the Registry Order, the DeCourseys were required to comply "no . . . later than" December 31, 2011.

It is undisputed that the DeCourseys were aware of the Registry Order but took no steps to comply and never presented evidence of inability to comply. Dkt. 77. As Lane Powell has described elsewhere, the DeCourseys instead manufactured a variety of excuses for their noncompliance. Dkt. 67; **Ex. A**; Dkt. 65.

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The DeCourseys have likewise refused to comply with numerous Court orders rejecting their objections to Lane Powell's discovery requests. On October 5, 2011, Lane Powell propounded discovery requests seeking information on the relationship between Lane Powell and the DeCourseys in the Windermere lawsuit, and noted the DeCourseys' depositions based on the anticipated response time. Dkt. 71 at 2. Their eventual responses were incomplete, claiming (1) attorney-client privilege over documents relating to Lane Powell's representation; and (2) that they should not be required to produce materials they believed Lane Powell had. *Id.* at 3. Because of the inadequate responses, Lane Powell reluctantly postponed their depositions. *Id.*

This Court entertained the DeCourseys' privilege and other objections to discovery repeatedly. Each time, the DeCourseys raised these same objections; each time, they were rejected.

- The DeCourseys sought an order that their communications with Lane Powell on the Windermere lawsuit were privileged. Dkt. 11 at 3. Lane Powell responded that this objection was baseless because they waived privilege by asserting far-reaching malpractice and related counterclaims against Lane Powell. Dkt. 18 at 6–7. This Court denied the DeCourseys' motion, rejecting their privilege and other objections. **Ex. D**.
- The DeCourseys raised the same arguments again on reconsideration, Dkt. 26, and this Court again rejected them, **Ex. E**.
- The DeCourseys' moved for a discovery plan again claiming privilege and that they should not have to produce documents they claimed Lane Powell had. Dkt. 24 at 6–8. Lane Powell again opposed on the same grounds. Dkt. 40 at 4. This Court denied the DeCourseys' motion, again rejecting their position on privilege and other objections. **Ex. F**.
- When, despite these orders, the DeCourseys still refused to produce documents, Lane Powell moved to compel on the basis that the DeCourseys' continued assertions of the same discovery objections were improper. Dkt. 71 at 3–4. The DeCourseys' response largely repeated previously-rejected arguments. Dkt. 90. The Court granted Lane Powell's motion, directing the DeCourseys to "provide full and complete responses to Plaintiff's First Set of Interrogatories and Requests for Production." **Ex. G**.
- The DeCourseys' sought reconsideration. Dkt. 97. This Court disposed of the DeCourseys' motion without requesting a response from Lane Powell. **Ex. H**. The Court required the DeCourseys to "respond to discovery requests ***in full*** with evidence and materials in accordance with this Court's order of February 3, 2012 in accordance with CR 26(b) and ER 502." *Id.* at 2 (emphasis added). The Court struck the DeCourseys' proposed language on the attorney-client privilege. *Id.*

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Despite the fact that the Discovery Orders consistently rejected the DeCourseys' discovery arguments, they continued to obstruct discovery. They even argued that the Court's ***rejection*** of their reconsideration motion actually granted them the relief they requested and precluded discovery of "privileged" documents. Dkt. 102 Ex. D. They persisted even after Lane Powell pointed out that the order's language did not support their position and that court rules would preclude it from granting relief on reconsideration without calling for a response. *Id.*

In sum, due to the DeCourseys' recalcitrance with respect to discovery, Lane Powell's efforts to litigate this case on the merits have been completely stymied. The DeCourseys have refused to fully respond to discovery requests that have been outstanding since shortly after this case was commenced. The DeCourseys' failure to respond has delayed their depositions. The parties have, instead, been distracted by dealing with the numerous motions the DeCourseys' conduct has necessitated.

C. The Court Finds the DeCourseys in Contempt, Granting Both Lane Powell's Motions for Contempt

The DeCourseys' refusal to comply with any of this Court's orders prompted Lane Powell to seek relief. Lane Powell moved for contempt for the failure to comply with the Registry Order. Dkt. 77. Lane Powell's motion was straightforward: the Registry Order required the DeCourseys to deposit funds into the Court Registry, they failed to comply, and they never claimed they were unable to do so. *Id.* The DeCourseys opposed. Dkt. 84.

Lane Powell filed a second motion, this time for both contempt and discovery sanctions for the DeCourseys' refusal to comply with the Court's discovery orders. Dkt. 101. They opposed using the same arguments that the Court had previously rejected on numerous occasions and, this time, also took the position that the Court's order on reconsideration had actually granted them the relief they sought based on the fact that the Court's reconsideration order included references to CR 26(b) and ER 502. Dkt. 103.

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The Court granted Lane Powell's motions for contempt and sanctions based on the DeCourseys' failure to comply with the Registry and Discovery Orders. In the Contempt Order, the Court found their continued refusal to comply to be "***without reasonable cause or justification*** and therefore [] ***willful and deliberate***." **Ex. A** (emphasis added). It found their conduct "has prejudiced Plaintiff's preparation of this case." *Id.* It ordered them to comply with the Registry and Discovery Orders by depositing $57,036.30 into the Court Registry and fully responding to discovery. *Id.* It further ordered monetary sanctions in the amount of Lane Powell's fees and costs in securing compliance. *Id.* It also cautioned them that "further and more serious sanctions, including the possibility of striking claims, defenses, or pleadings, or entry of default may follow from any further failure to abide by court orders or rules." *Id.*

D. The DeCourseys Seek a Stay of All Proceedings Before This Court and the Court of Appeals and Continue Their Pattern of Noncompliance

True to form, the DeCourseys refused to comply with the Contempt Order. Instead, they belatedly sought a stay from this Court, Dkt. 110, and then the Court of Appeals, **Ex. I**. Both motions for stay were denied. **Exs. J & K**.

On June 6, 2012, and after this Court denied the DeCourseys' first motion for stay and the Court of Appeals denied their second motion for stay, Lane Powell's counsel asked the DeCourseys about their intentions for compliance with the Court's orders. **Ex. L** ("Please let us know quickly your intentions regarding compliance with the court's orders."). The DeCourseys did not respond. Eaton Decl. ¶ 2. Counsel for Lane Powell again inquired as to the DeCourseys' intentions. **Ex. L** ("We have received no response from you regarding your intentions as to compliance with the court's orders. Again, please let us know ASAP what your intentions are with respect to this issue."). The DeCourseys again did not respond. Eaton Decl. ¶ 2.

On June 26, 2012, the DeCourseys (true to form) asked the Court of Appeals to reconsider its denial of their second stay motion. **Ex. M**. In connection with that request,

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they posted a supersedeas bond in the amount of $57,036.30—the amount they were required to deposit into the Court Registry months ago—and notified the Court of the same. **Ex.** N. The DeCourseys' notice to this Court implies that that the Court of Appeals asked them to post a bond as a condition for granting a motion for stay. *Id.* This is false. The Court of Appeals did no such thing; it merely recognized that the DeCourseys had not taken appropriate steps to obtain a stay such as, for example, posting a bond. **Ex. J** ("[T]he Decoursey's [sic] have not identified the Rule of Appellate Procedure under which they seek a stay, demonstrated that a stay is warranted, or taken steps to stay enforcement of the trial court order by posting supersedeas."). This motion for stay (the DeCourseys' third) is currently pending.

To date, the DeCourseys have neither complied with this Court's orders nor indicated whether they intend to comply with them.

III. EVIDENCE RELIED UPON

Lane Powell relies on the Declaration of Malaika M. Eaton in Support of Plaintiff's Third Motion for Contempt and Exhibits A–N attached thereto, and the records and files herein.

IV. AUTHORITY

A. The Court Has Statutory and Inherent Authority to Find the DeCourseys in Contempt of Court for their Failure to Comply with the Contempt Order

Under RCW 7.21 and pursuant to its inherent authority, the Court has the power to hold in contempt any person who intentionally disobeys "any lawful ... order ... of the court." RCW 7.21.010(1)(b), (3); *see also State v. Browet*, 103 Wn.2d 215, 217, 691 P.2d 571 (1984) (noting that the court has civil, criminal, and inherent power to hold individuals in contempt). As Lane Powell described in its previous motions for contempt, the statutory scheme specifically permits the Court to "impose a remedial sanction" "[i]f the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform." RCW 7.21.030(1)–(2). The permitted sanctions specifically

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include even imprisonment and fines in as much as $2,000 per day, but the statute also allows for the Court to fashion sanctions appropriate to the circumstances. RCW 7.21.030(2)(a)–(b), (d).

As was also described in connection with Lane Powell's two previous contempt motions, the statute also permits the Court to "order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees." RCW 7.21.030(3). Such a compensatory sanction is in addition to the sanctions discussed above authorized by subsections (1) and (2). *Id.*

B. The Court has Authority to Sanction the DeCourseys Pursuant to CR 37(b)(2) for their Deliberate Refusal to Comply with the Contempt Order, which Again Compels Them to Supplement Their Discovery Responses

Under Civil Rule 37(b)(2), the Court has authority to sanction the DeCourseys for their continued, deliberate refusal to comply with its February 3, 2012 order compelling discovery and the subsequent Contempt Order, which also ordered the DeCourseys to comply with their discovery obligations. In this regard, CR 37(b)(2) provides:

> **(b) Failure to Comply With Order.**
>
> ...
>
> (2) *Sanctions by Court in Which Action is Pending.* If a party . . . fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
>
> (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
>
> (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;
>
> (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or

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> proceedings or any part thereof, or rendering a judgment by default against the disobedient party;
>
> (D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to physical or mental examination;
>
> . . .
>
> In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order . . . to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds the failure was substantially justified or that other circumstances make an award of expenses unjust.

CR 37(b)(2) (emphasis added).

Trial courts have considerable discretion in fashioning an appropriate sanction for violation of a discovery order. *See, e.g., Idahosa v. King Cnty.*, 113 Wn. App. 930, 939, 55 P.3d 657 (2002). "[I]n punishing a discovery violation, the court should impose the least severe sanction that will be adequate to serve the purpose of the particular sanction." *Diaz v. Wash. State Migrant Council*, 165 Wn. App. 59, 86, 265 P.3d 956, 970 (2011). "The purposes of sanctions are to deter, punish, compensate, educate, and ensure that the wrongdoer does not profit from the wrong." *Roberson v. Perez*, 123 Wn. App. 320, 337, 96 P.3d 420 (2004), *rev. denied*, 155 Wn.2d 1002 (2005) (citing *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons*, 122 Wn.2d 299, 345–47, 858 P.2d 1054 (1993)).

C. The DeCourseys' Refusal to Comply with the Court's Orders, Including the Court's Previous Contempt Order, Constitutes Contempt of Court and/or Conduct Sanctionable Under CR 37(b)(2)

The DeCourseys are precisely the type of litigants for which sanctions and contempt were intended. The DeCourseys' refusal to comply with the Court's orders—including an order holding them in contempt that specifically warned them that their counterclaims and defenses would be stricken—constitutes contempt of Court and is sanctionable under RCW 7.21 or pursuant to Rule 37(b)(2). Indeed, it is undisputed that the DeCourseys have made a habit of refusing to comply with the Court's orders. They have yet to comply with a single order this Court has issued.

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This Court has already held that that they have ***willfully and deliberately*** refused to comply with the (1) Registry Order, which requires them to deposit additional funds into the Court Registry to protect Lane Powell's lien interests they surreptitiously compromised, and (2) Discovery Orders, which reject their unfounded privilege objections to Lane Powell's discovery requests. **Ex. A**. It is likewise undisputed that the DeCourseys have not complied with the Contempt Order, which holds the DeCourseys in contempt and again requires them to comply with the Discovery Orders and Registry Order. Eaton Decl. ¶ 3. Not only have they refused to comply, they have likewise ignored Lane Powell's attempts to obtain information about their intentions to comply. **Ex. L**; Eaton Decl. ¶ 2–3.

Just as with the Registry Order and the court's various discovery orders, there is no doubt that that the DeCourseys were aware of the Court's Contempt Order requiring them to deposit funds into the Court Registry and compelling production of discovery responses. *See supra* Section II(B). Indeed, neither of their first two motions for stay of the Contempt Order argued they were unable to comply with it. Dkt. 110; **Ex. I**. Rather, the DeCourseys inexplicably persist in refusing to comply with the Court's Contempt Order, even after not one but **two** requests for stay of that order have been denied. In sum, it is beyond dispute that the DeCourseys have not complied with the Registry Order, the Discovery Orders, or the Contempt Order. Nor have they indicated that they intend to do so.

D. The Court Should Strike the DeCourseys' Counterclaims

In connection with the contempt finding, the Court cautioned the DeCourseys that "further and more serious sanctions, including the possibility of striking claims, defenses, or pleadings, or entry of default may follow from any further failure to abide by court orders or rules." **Ex. A** at 2. That warning was given nearly two months ago and the DeCourseys have continued to delay this case and refuse to comply since then. As set

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forth above, the DeCourseys' deliberate defiance of court orders warrants contempt under RCW 7.21.030(2) and is sanctionable under CR 37(b)(2). Thus, the only remaining question is which available sanction is sufficient to ensure compliance with the order.

To adequately punish the DeCourseys and deter them from further noncompliance, the Court should strike the DeCourseys' counterclaims and defenses. A dismissal is authorized when "(1) the party's refusal to obey the discovery order was willful or deliberate, (2) the party's actions substantially prejudiced the opponent's ability to prepare for trial, and (3) the trial court explicitly considered whether a lesser sanction would probably have sufficed." *Rivers v. Wash. State Conference of Mason Contractors*, 145 Wn.2d 674, 686, 41 P.3d 1175 (2002).

The DeCourseys' complete disregard for every single order this Court has issued, including a previous order holding them in contempt and sanctioning them, easily meets this standard. This Court has already held that the DeCourseys' failure to comply with the Discovery Orders and Registry Order (both of which underlie the Contempt Order) was willful and deliberate.[1] Ex. [April 25, 2012 Order]. The Court also concluded that the DeCourseys' conduct prejudiced Lane Powell. *Id.* Thus, the first two factors of the *Rivers* test are satisfied by the Court's previous Contempt Order. The passage of two additional months during which the DeCourseys have continued to defy the Court and have continued to preclude Lane Powell from making any progress toward resolving this case on the merits have only further emphasized that the DeCourseys' conduct is willful and deliberate, and have only further increased the prejudice to Lane Powell, which has been unable to prosecute this case because of the DeCourseys complete refusal to

[1] There can be no dispute that the DeCourseys' continued refusal to comply with the Court's discovery orders has prejudiced Lane Powell. As described in Lane Powell's motion to compel, Lane Powell noted the depositions of the DeCourseys for November 2011, after the DeCourseys should have provided full and complete discovery responses. Dkt. 71 at 2–3. Lane Powell has been stymied in its efforts to move this case forward on both its claims and to defend the counterclaims brought by the DeCourseys because of the DeCourseys' refusal to produce documents as ordered. *Id.* at 5, 7.

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participate in discovery.

This prejudice cannot be remedied by merely holding the DeCourseys in contempt (again) and imposing monetary sanctions. Indeed, this Court has already imposed monetary sanctions and that ruling has done nothing to ensure the DeCourseys' compliance or punish their defiance. The Court has also already found the DeCourseys in contempt. **Ex. A**. It has awarded Lane Powell the attorneys' fees and costs it incurred in connection with securing the Contempt Order. *Id.* And even after the DeCourseys' first two requests for a stay of the Contempt Order were denied, they have still not complied. Nor have they responded to numerous requests as to their compliance. Given all of these facts (all of which are undisputed), the DeCourseys' consistent and repeated defiance of court orders strongly suggests that further orders of contempt and monetary sanctions will not sway them from their defiant behavior.

Striking their counterclaims and defenses is the least severe sanction to accomplish the goals of sanctions; lesser sanctions simply will not suffice. The DeCourseys' various counterclaims all complain about their relationship with Lane Powell and one of the chief complaints is that Lane Powell's fees are excessive for the work performed. *E.g.*, Dkt. 21; Dkt. 135 at 3–4. Delving into these counterclaims requires them to produce all evidence on their representation with Lane Powell. The DeCourseys' defenses to Lane Powell's claims relate to the same issues. Dkt. 21. The Court has correctly mandated—on numerous occasions—that because of the scope and nature of the DeCourseys' claims against Lane Powell, the DeCourseys have waived the attorney-client privilege and therefore must fully and completely respond to Lane Powell's discovery requests. Indeed, allowing the DeCourseys to continue to withhold documents regarding this relationship on the basis of attorney-client privilege is not only contrary to well-established Washington law, but also rewards the wrongdoing DeCourseys and deeply prejudices Lane Powell.

Accordingly, the Court should strike the DeCourseys' counterclaims and defenses

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pursuant to CR 37(b)(2)(B)–(C) and its inherent authority under RCW 7.21.030(2)(d). *See also Burnet v. Spokane Ambulance,* 131 Wn.2d 484, 494, 933 P.2d 1036 (1997) (recognizing the Court may enter "an order refusing to allow the disobedient party to support . . . designated claims" (quoting CR 37(b)(2)(B))). Such an order is the only sanction that the DeCourseys cannot simply ignore and that is appropriate to the circumstances of this case.

V. CONCLUSION

For the reasons set forth herein, Lane Powell respectfully requests that the Court hold Defendants in contempt, sanction them by striking their counterclaims and defenses, and to reimburse Lane Powell (again) for the costs incurred in seeking compliance under CR 37(b)(2) and RCW 7.21.030(2)(d). A proposed form of order is lodged herewith.

DATED this 27th day of June, 2012.

McNAUL EBEL NAWROT & HELGREN PLLC

By: _____
Robert M. Sulkin, WSBA No. 15425
Malaika M. Eaton, WSBA No. 32387

Attorneys for Plaintiff

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on June 27, 2012, I caused the foregoing motion to be served by electronic mail (per agreement) on the following:

Mark and Carol DeCoursey
8209 172nd Avenue N.E.
Redmond, Washington 98052
mhdecoursey@gmail.com
cdecoursey@gmail.com
Defendants Pro Se

DATED this 27th of June, 2012, at Seattle, Washington.

Melissa P. Raynor-Redmond, Legal Assistant

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Hon. Richard D. Eadie
Plaintiff's Third Motion for Contempt
Noted for Consideration: July 6, 2012
Without Oral Argument

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LANE POWELL PC, an Oregon professional corporation, Plaintiff, v. MARK DeCOURSEY and CAROL DeCOURSEY, individually and the marital community composed thereof, Defendants.	No. 11-2-34596-3SEA DECLARATION OF MALAIKA M. EATON IN SUPPORT OF PLAINTIFF'S THIRD MOTION FOR ORDER OF CONTEMPT OR RULE 37 SANCTIONS

I, MALAIKA M. EATON, declare under penalty of perjury of the laws of the State of Washington that the following statements are true and correct and based on personal knowledge:

1. I am one of the attorneys for Plaintiff, Lane Powell PC, in the above-captioned matter and am competent to testify to the matters set forth herein.

2. On June 6, 2012, and after this Court denied the DeCourseys' first motion for stay and the Court of Appeals denied their second motion for stay, I asked the DeCourseys about their intentions for compliance with the Court's orders. The DeCourseys did not respond. On June 8, 2012, I again inquired as to the DeCourseys' intentions. The DeCourseys again did not respond.

3. The DeCourseys have not complied with the Contempt Order, which holds

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the DeCourseys in contempt and again requires them to comply with the Discovery Orders and Registry Order.

4. Attached hereto and incorporated by reference in Plaintiff's Third Motion for Order of Contempt or Rule 37 Sanctions are true and correct copies of the following:

Exhibit A: Order on Motion to Compel and for Order of Contempt, dated April 25, 2012;

Exhibit B: Lane Powell PC's Amended Notice of Attorney's Lien filed in *V & E Medical Imaging Services, Inc. v. Mark DeCoursey, et al.*, King County Superior Court Case No. 06-2-24906-2 SEA);

Exhibit C: Order on Plaintiff's Motion to Require Deposit of Funds Into Court Registry, dated December 21, 2011;

Exhibit D: Order on Defendants' Motion for Discovery Protection Pursuant to CR 26(c) and Sanctions Under CR 26(i), dated November 17, 2011;

Exhibit E: Order denying Motion for Reconsideration, dated December 30, 2011;

Exhibit F: Order on Defendants' Amended Motion for Discovery Plan Pursuant to CR 26(f), dated December 12, 2011;

Exhibit G: Order on Plaintiff's Motion to Compel Defendants' Responses to Plaintiffs' First Discovery Requests, dated February 3, 2012;

Exhibit H: Order on Motion to Reconsider Order Compelling Discovery of Privileged Materials, dated February 29, 2012;

Exhibit I: Defendants' Emergency Motion for Stay filed with the Court of Appeals, Division I, dated May 2, 2012;

Exhibit J: Letter ruling from the Court of Appeals, Division I, dated May 18, 2012;

Exhibit K: Order re: Defendants' Motion to Stay, dated June 4, 2012;

Exhibit L: Email communications between June 5 and 18, 2012, from Malaika Eaton to the DeCourseys regarding their intentions with regard to complying with the Court's orders;

Exhibit M: DeCourseys' Second Motion for Stay of Orders, dated June 26, 2012;

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Exhibit N: Supersedeas and Cost of Appeal Bond dated June 22, 2012; Collateral Receipt and Agreement dated June 22, 2012; Supersedeas Bond Amended dated June 26, 2012; Declaration of Services dated June 26, 2012; and e-filing Confirmation Receipt for June 27, 2012.

Dated this 27th day of June, 2012, at Seattle, Washington.

Malaika M. Eaton, WSBA No. 32837

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on June 27, 2012, I caused the foregoing **Plaintiff's Third Motion for Order of Contempt or Rule 37 Sanctions** to be served by electronic mail (per agreement) on the following:

Mark and Carol DeCoursey
8209 172nd Avenue N.E.
Redmond, Washington 98052
mhdecoursey@gmail.com
cdecoursey@gmail.com
Defendants Pro Se

DATED this 27th day of June, 2012, at Seattle, Washington.

Melissa P. Rayner-Redmond, *Legal Assistant*

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Exhibit A

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

LANE POWELL PC, etc.,

Plaintiff,

v.

MARK DECOURSEY and CAROL DECOURSEY, etc.,

Defendants

NO. 11-2-34596-3 SEA

ORDER ON MOTIONS TO COMPEL AND FOR ORDER OF CONTEMPT

(CLERK'S ACTION REQUIRED)

The Court has considered Plaintiff's motions for Contempt for Failure to Deposit Funds in accordance with this Court's December 21, 2011 Order and Plaintiff's Motion for Contempt for failure to respond to Plaintiff's First Set of Discovery Requests, and having considered Defendants' Responses, Plaintiff's reply documents, and having considered the ADA accommodation request of Defendants (Court's response attached), now therefore,

It is ORDERED that Defendants shall comply with this Court's Order of December 21, 2011 by depositing into the Court Registry (King County Office of

ORIGINAL

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

Judicial Administration, King County Courthouse, 516 Third Avenue, Seattle, WA) the sum of $57,036.30 immediately. In order to allow for the delivery of this Order, and the Defendants' compliance, deposit shall be not later than 4:00 p.m. May 3, 2012.

It is further ORDERED that Defendants serve on Plaintiff's counsel full and complete answers to Plaintiff's First Set of Discovery Requests on or before 4:00 p.m. May 3, 2012, and that those answers shall be made on the basis that the attorney-client privilege between Plaintiff and Defendants has been waived with respect to any representation by Plaintiff of Defendants in or related to the Windermere lawsuit.

Defendants refusal to comply with this Court's Orders referenced above has been without reasonable cause or justification and therefore is willful and deliberate and has prejudiced Plaintiff's preparation of this case. Plaintiff is awarded reasonable attorney fees pursuant to RCW 7.21.030 (3), for bringing the motion for contempt for failure to deposit funds, and Plaintiff may note a motion pursuant to CR37(4) for fees and expenses related to the motion for contempt for failure to respond to Plaintiff's first set of discovery.

Defendants are cautioned that further and more serious sanctions, including the possibility of striking claims, defenses, or pleadings, or entry of default, may follow from any further failure to abide by court orders or rules.

DATED this 25th day of APRIL, 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

Judge Eadie

Superior Court for the State of Washington
in and for the County of King

JUDGE PALMER ROBINSON
Department 41

King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9103

April 10, 2012

Carol A. DeCoursey
8209 172nd Avenue NE
Redmond, WA 98052

Mark H. DeCoursey
8209 172nd Avenue NE
Redmond, WA 98052

Re: ADA Accommodation Request

I am the Assistant Presiding Judge of King County Superior Court. Your ADA Accommodation Request was forwarded to me. I note that you have specified that the list of accommodations you seek is to be viewed by the trier of fact, but that the material you have submitted supporting those requested accommodations is to be seen by the ADA Administrator only.

GR33 provides that the Order ruling on the request for accommodation shall be issued by a Judge. Our ADA Administrator, Linda Ridge, is not a judge and cannot issue orders.

I am able to comment on several of your requested accommodations. You may record, for your own private use, any court hearing. The Official Court Record will be only a transcript prepared by a court reporter who is an employee of King County or by a transcriptionist preparing a transcript from FTR digital recording made under the control of an employee of the Department of Judicial Administration.

You may have an ADA advocate with you in Court. However, the advocate will not be allowed to speak for you or otherwise represent you.

All court rules, orders and instructions will be enforced equally.

Court orders and instructions will be provided in clear unambiguous language and will be reduced to writing when practical.

There will be no threats, exploitation, deception or intimidation of any witness or party by anyone.

The bulk of your requests need to be addressed by the trial judge in the context of his oversight of the discovery process and conduct of court hearings. For instance, I may say there will be no threats, but that is not particularly helpful without knowing what

question or remark you find to be threatening and an examination of the context in which the question was asked or comment made.

Your request for additional time to reply to motions may depend on the timing of the original motion. Whether or not a party would be prejudiced by a continuance of a hearing cannot possibly be decided in a vacuum.

I am mindful that you have not given me authority to share much of your support for your requested accommodations with Judge Eadie. I am requesting that authority so that he may, consistent with the rule, make his decision on an individual and case-specific basis with due regard to the nature of the disability and the feasibility of the requested accommodation.

Very truly yours,

Palmer Robinson
Assistant Presiding Judge

PR: cdc
cc: Honorable Richard Eadie

Exhibit B

THE HONORABLE MICHAEL J. FOX

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

V & E MEDICAL IMAGING SERVICES, INC., Plaintiff, v. MARK DeCOURSEY, et ux., et al., Defendants/Third-Party Plaintiffs, v. RICHARD BIRGH, et al., Third-Party Defendants.	NO. 06-2-24906-2 SEA **LANE POWELL PC'S AMENDED NOTICE OF ATTORNEY'S LIEN** **(CLERK'S ACTION REQUIRED)**

TO: The Clerk of the Court; and

AND TO: Paul Stickney, Paul H. Stickney Real Estate Services, Inc., and Windermere Real Estate, S.C.A., Inc. (collectively, "Third Party-Defendants") ; and

AND TO: William R. Hickman, Reed McClure; and Matthew F. Davis, Demco Law Firm P.S., counsel for Third-Party Defendants; and

AND TO: Michele Earl-Hubbard, Chris Roslaniec and Allied Law Group LLC, counsel for Mark and Carol DeCoursey.

NOTICE IS HEREBY GIVEN that the undersigned attorneys, Lane Powell PC, claim a lien pursuant to RCW 60.40.010, for services rendered to Defendants and Third-Party

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

Plaintiffs Mark and Carol DeCoursey and expenses incurred on their behalf in the amount of not less than $384,881.66. The lien is for amounts due to Lane Powell, together with interest, for services performed in conjunction with an action before the trial and appellate courts.

DATED: August 3, 2011

LANE POWELL PC

By _____
Grant S. Degginger, WSBA No. 15261
Ryan P. McBride, WSBA No. 33280
Andrew J. Gabel, WSBA No. 39310

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2011, I caused to be served a copy of the attached on the following person(s) in the manner indicated below at the following address(es):

William R. Hickman
Reed McClure
601 Union Street, Suite 1500
Seattle, WA 98101-1363

☐ by **CM/ECF**
☐ by **Electronic Mail**
☐ by **Facsimile Transmission**
☑ by **First Class Mail**
☐ by **Hand Delivery**
☐ by **Overnight Delivery**

Matthew F. Davis
Demco Law Firm, P.S.
5224 Wilson Avenue S, Suite 200
Seattle, WA 98118-2587

☐ by **CM/ECF**
☐ by **Electronic Mail**
☐ by **Facsimile Transmission**
☑ by **First Class Mail**
☐ by **Hand Delivery**
☐ by **Overnight Delivery**

Michele Earl-Hubbard
Chris Roslaniec
Allied Law Group LLC
2200 Sixth Ave., Suite 770
Seattle, WA 98121

☐ by **CM/ECF**
☐ by **Electronic Mail**
☐ by **Facsimile Transmission**
☐ by **First Class Mail**
☑ by **Hand Delivery**
☐ by **Overnight Delivery**

Helen Van Buren

Helen Van Buren

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

Exhibit C

Hon. Richard D. Eadie

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LANE POWELL PC, an Oregon professional corporation,

Plaintiff,

v.

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

Defendants.

No. 11-2-34596-3SEA

ORDER ON PLAINTIFF'S MOTION TO REQUIRE DEPOSIT OF FUNDS INTO COURT REGISTRY

Pending before the Court is Plaintiff's Motion to Require Deposit of Funds Into Court Registry. In connection with Plaintiffs' Motion, the Court reviewed the following:

(1) Plaintiff's Motion to Require Deposit of Funds Into Court Registry;

(2) Declaration Malaika M. Eaton in Support of Plaintiff's Motion to Require Deposit of Funds Into Court Registry and Exhibits A–G attached thereto;

(3) Response to Plaintiff's Motion to Require Deposit of Additional Funds Into Court Registry and Request for Court to Sanction Lane Powell for CR 11 Violations with Subjoined Declaration and Exhibits 1–10 attached thereto;

(4) Declaration of Michele Earl-Hubbard and Exhibits A–H attached thereto;

(5) Plaintiff's Reply in Support of Motion to Deposit Funds Into Court Registry;

(6) Declaration of Ryan P. McBride in Support of Plaintiff's Motion to Deposit Funds Into Court Registry; and

(7) Declaration of Grant S. Degginger in Support of Plaintiff's Motion to Deposit Funds Into Court Registry.

LAW OFFICES OF
McNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

The Court also reviewed the records and files herein. And the Court being otherwise advised herein, now, therefore,

HEREBY ORDERS, ADJUDGES AND DECREES that Plaintiff's Motion to Require Deposit of Funds Into Court Registry is GRANTED. Defendants are directed to deposit an amount no less than $57,036.30 into the Registry of the Court immediately and in no event later than ten (10) days from the entry of this Order.

IT IS SO ORDERED.

DATED this 21st day of December, 2011.

Honorable Richard D. Eadie
King County Superior Court Judge

Presented by:

McNAUL EBEL NAWROT & HELGREN PLLC

By: s/Malaika M. Eaton
Robert M. Sulkin, WSBA No. 15425
Malaika M. Eaton, WSBA No. 32837

Attorneys for Plaintiff Lane Powell, PC

LAW OFFICES OF
McNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

Exhibit D

Hon. Richard D. Eadie

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LANE POWELL PC, an Oregon professional corporation, Plaintiff, v. MARK DeCOURSEY and CAROL DeCOURSEY, individually and the marital community composed thereof, Defendants.	No. 11-2-34596-3SEA ORDER ON DEFENDANTS' MOTION FOR DISCOVERY PROTECTION PURSUANT TO CR 26(c) AND SANCTIONS UNDER CR 26(i)

Pending before the Court is Defendants' Motion for Discovery Protection Pursuant to CR 26(c) and Sanctions Pursuant to CR 26(i). In connection with Defendants' Motion, the Court reviewed the following:

(1) Defendants' Motion for Discovery Protection Pursuant to CR 26(c) and Sanctions Pursuant to CR 26(i) and Subjoined Declaration and Exhibits A–M attached thereto;

(2) Plaintiff's Opposition to Defendants' Motion for Discovery Protection Pursuant to CR 26(c) and Sanctions Pursuant to CR 26(i);

(3) Declaration Malaika M. Eaton in Opposition to Defendants' Motion for Discovery Protection Pursuant to CR 26(c) and Sanctions Pursuant to CR 26(i) and Exhibits A–B attached thereto; and

(4) Defendants' reply and supporting material, ~~if any~~RE

The Court also reviewed the records and files herein. And the Court being otherwise advised herein, now, therefore,

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600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

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HEREBY ORDERS, ADJUDGES AND DECREES that Defendants' Motion for Discovery Protection Pursuant to CR 26(c) and Sanctions Pursuant to CR 26(i) is DENIED.*

IT IS SO ORDERED.

DATED this 17th day of November, 2011.

Richard D Eadie

Honorable Richard D. Eadie
King County Superior Court Judge

Presented by:

McNAUL EBEL NAWROT & HELGREN PLLC

By: s/Malaika M. Eaton
Robert M. Sulkin, WSBA No. 15425
Malaika M. Eaton, WSBA No. 32837

Attorneys for Plaintiff Lane Powell, PC

* However, Defendants' motion for a protective order was not only appropriate under CR 26(c) but required under LCR 37(d) – see also the official comment to LCR 37. Defendants acted in accordance with court rules and best practices in bringing this motion.

CR 26(i) do not require recording of any kind. Private tape recording is not allowed unless agreed to by all parties in writing. If either party insists on an official court reporter at a discovery conference may report that fact in their discovery motion, or may have the costs of reporting, or the cost of a transcript assessed against the party insisting on reporting the conference. Such reporting should not be necessary - a conference is not a deposition. RE

LAW OFFICES OF
McNAUL EBEL NAWROT & HELGREN PLLC
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Seattle, Washington 98101-3143
(206) 467-1816

Exhibit E

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

LANE POWELL, PC, etc.

Plaintiff,

v.

MARK DECOURSEY and CAROL DECOURSEY,

Defendants,

NO. 11-2-34596-3 SEA

ORDER DENYING MOTION FOR RECONSIDERATION

This matter is before the court on Defendants' Motion for Reconsideration and Clarification of this Court's Order dated November 17, 2011 which was originally noted for hearing on December 7, 2011 and subsequently renoted for December 30, 2011. The Court has considered the motion for reconsideration, and that motion is DENIED, but the Court will attempt to clarify the comments handwritten in the Court's November 17, 2011 Order.

The Court's first handwritten comment on the Order of November 17, 2011 was meant to address Plaintiff's objection to Defendants' Motion for Discovery Protection on the grounds that it was not appropriate in some way to bring such a motion. This Court felt that it was an appropriate motion, and brought in an appropriate manner, but that does not mean that the motion should be granted – only that it was appropriate to bring Defendants'

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

issues to the Court in the form of their Motion for Discovery Protection (Motion for Protective Order), and the Court determined that the Motion should be, and was DENIED.

The second hand-written paragraph seems to be clear – CR26(i) discovery conferences are not required to be recorded; if any Party insists on recording a discovery conference, and the other party accedes to the request, then all costs, including the cost of a transcript for each party should be assessed against the party requesting that the conference be recorded. However, reporting should not be necessary – a discovery conference is not a deposition. No one is excused from good-faith participation in a CR26(i) conference on the grounds that the other party does not agree to have the conference recorded.

Dated this 30th day of December, 2011.

Richard D Eadie

Richard D. Eadie, Judge

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

Exhibit F

Hon. Richard D. Eadie

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LANE POWELL PC, an Oregon professional corporation,

Plaintiff,

v.

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

Defendants.

No. 11-2-34596-3SEA

ORDER ON DEFENDANTS' AMENDED MOTION FOR DISCOVERY PLAN PURSUANT TO CR 26(f)

Pending before the Court is Defendants' Amended Motion for Discovery Plan Pursuant to CR 26(f). In connection with Defendants' Motion, the Court reviewed the following:

(1) Defendants' Amended Motion for Discovery Plan Under CR 26(f) and Subjoined Declaration with Exhibits A–Q attached thereto;

(2) Plaintiff's Opposition to Defendants' Motion for Discovery Plan Pursuant to CR 26(f);

(3) Declaration Malaika M. Eaton in Opposition to Defendants' Motion for Discovery Plan Pursuant to CR 26(f) and Exhibit A attached thereto; and

(4) Defendants' reply and supporting material, if any.

The Court also reviewed the records and files herein. And the Court being otherwise advised herein, now, therefore,

HEREBY ORDERS, ADJUDGES AND DECREES that Defendants' Motion for Discovery Plan Pursuant to CR 26(f) is DENIED. *(See p. 2)

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600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

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IT IS SO ORDERED.

DATED this 12th day of December, 2011.

Richard D Eadie

Honorable Richard D. Eadie
King County Superior Court Judge

Presented by:

McNAUL EBEL NAWROT & HELGREN PLLC

By: s/Malaika M. Eaton
Robert M. Sulkin, WSBA No. 15425
Malaika M. Eaton, WSBA No. 32837

Attorneys for Plaintiff Lane Powell, PC

1. neither party seeks an adjustment to the case schedule, and therefore the case schedule and civil rules will govern discovery.

2. CR 26(i) conferences are required prior to filing a discovery related motion, but a conference is not required as a condition to answering interrogatories or to compliance with, or meeting of dates by which ~~recon~~ discovery responses are due.

3. This court's Order of November 30, 2011 (Sub # 37) is vacated.

RR

LAW OFFICES OF
McNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

Exhibit G

Hon. Richard D. Eadie

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LANE POWELL PC, an Oregon professional corporation,

Plaintiff,

v.

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

Defendants.

No. 11-2-34596-3SEA

ORDER ON PLAINTIFF'S MOTION TO COMPEL DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST DISCOVERY REQUESTS

Pending before the Court is Plaintiff's Motion to Compel Defendants' Responses to Plaintiffs' First Discovery Requests. In connection with Plaintiffs' Motion, the Court reviewed the following:

(1) Plaintiff's Motion to Compel Defendants' Responses to Plaintiffs' First Discovery Requests;

(2) Declaration Malaika M. Eaton in Support of Plaintiff's Motion to Compel Defendants' Responses to Plaintiffs' First Discovery Requests and Exhibits A–S attached thereto;

(3) DeCourseys' Response to Plaintiff's Motion to Compel Defendant's Responses to Plaintiff's First Set of Discovery Requests;

(4) Declaration of Mark DeCoursey and Exhibits A-B attached thereto; and

(5) Plaintiff's Reply in Support of Motion to Compel Defendants' Responses to Plaintiff's First Set of Discovery Requests.

The Court also reviewed the records and files herein. And the Court being otherwise advised herein, now, therefore,

LAW OFFICES OF
McNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

HEREBY ORDERS, ADJUDGES AND DECREES that Plaintiff's Motion to Compel Defendants' Responses to Plaintiffs' First Discovery Requests is GRANTED. Defendants shall provide full and complete responses to Plaintiff's First Set of Interrogatories and Requests for Production no later than 10 days from the entry of this Order.

IT IS SO ORDERED.

DATED this 3RD day of February, 2012.

Richard D Eadie

Honorable Richard D. Eadie
King County Superior Court Judge

Presented by:

McNAUL EBEL NAWROT & HELGREN PLLC

By: s/Malaika M. Eaton
Robert M. Sulkin, WSBA No. 15425
Malaika M. Eaton, WSBA No. 32837

Attorneys for Plaintiff Lane Powell, PC

LAW OFFICES OF
McNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

Exhibit H

Honorable Judge Richard D. Eadie
Hearing Date: February 29, 2012
Hearing Time: 9:00 AM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF KING

LANE POWELL, PC, an Oregon professional corporation,

Plaintiff,

v.

MARK DECOURSEY and CAROL DECOURSEY

Defendants

No. 11-2-34596-3 SEA

ORDER ON MOTION TO RECONSIDER ORDER COMPELLING DISCOVERY OF PRIVILEGED MATERIALS ~~[PROPOSED]~~ RE

This matter having come for hearing before this Court on Defendant DeCourseys' *Motion to Reconsider Order Compelling Discovery of Privileged Materials*, and the Court having reviewed the records and files pertaining to this action, including:

1. Lane Powell's January 24, 2012 motion, *Plaintiff's Motion to Compel Defendants' Responses to Plaintiff's First Set of Discovery Requests*
2. DeCourseys *Opposition* to the above motion
3. DeCourseys' *Motion to Reconsider Order Compelling Discovery of Privileged Materials*
4. Declaration of Mark DeCoursey and supporting exhibits
5. ~~Lane Powell's response, if any~~ RE
6. ~~DeCourseys' reply, if any~~ RE

Mark & Carol DeCoursey, *pro se*
8209 172nd Ave NE
Redmond, WA 98052
Telephone 425.885.3130

The Court rules as follows:

The Court's Order of February 3, 2012, *Order on Plaintiff's Motion to Compel Defendants' Responses to Plaintiff's First Discovery Requests*, is VACATED.

The Court also FINDS THAT:

1. That attorney-client privilege and the waiver of privilege is a fundamental issue of American law and jurisprudence;
2. That the courts have held that a violation attorney-client privilege could easily be gravely prejudicial to a case;
3. That Lane Powell has not provided any authorities to support its contention that DeCourseys have universally waived privilege concerning the Windermere lawsuit;

And therefore, this Court ORDERS: RE

4. That DeCourseys must respond to discovery requests in full with evidence and materials ~~that are not privileged~~ IN ACCORDANCE WITH THIS COURT'S ORDER OF 2/3/2012. in accordance with CR 26(b) and ER 502.
5. _____

_____

_____

_____

Signed this 29th day of February, 2012.

Richard D Eadie

Judge Richard D. Eadie

Submitted by:

_____/s Mark DeCoursey_____
Mark DeCoursey
Pro se

Mark & Carol DeCoursey, *pro se*
8209 172nd Ave NE
Redmond, WA 98052
Telephone 425.885.3130

Exhibit I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

MARK DeCOURSEY and CAROL DeCOURSEY, Defendants/Petitioners v. LANE POWELL, PC Plaintiff/Respondent	NO. **EMERGENCY MOTION FOR STAY** On Appeal From King County Superior Court (Case No. 11-2-34596-3 Sea)

I. IDENTITY OF MOVING PARTY

Mark and Carol DeCoursey, Petitioners, (hereinafter "DeCourseys") asks the Court for the relief designated in Part II below.

II. STATEMENT OF RELIEF SOUGHT

The DeCourseys ask the Court to grant a Stay of the trial court's Order dated April 27, 2012, attached hereto as Exhibit A, to allow the DeCourseys to seek discretionary review of such Order from this Court.

III. FACTS RELEVANT TO MOTION

The DeCourseys have been sued by their former attorneys, Lane Powell ("Respondent") which alleges a right to more than $755,170.96 of a $1,211,038.18 judgment in a real estate lawsuit as alleged attorney's fees and costs. Lane Powell claims this amount although it is many times the $100,000 quoted to DeCourseys when they signed the retainer agreement as the estimated cost of the litigation. It is also $173,626.87 more than the trial court, this Court, and the Supreme Court found to be reasonable fees and costs throughout the representation in connection with fee motions.

Despite abandoning ready awards, failing to pursue contractually obligatory appeals, and failing to present certain fee and cost requests to the trial and appellate courts for reimbursement, Lane Powell now seeks to recover its full invoice from DeCourseys plus interest. DeCourseys terminated Lane Powell and hired other counsel to resolve the original real estate matter following a remand ordered by the appellate court, and Lane Powell filed a lien against the judgment for $384,881.66. DeCourseys and the judgment debtors (Windermere Real Estate, *et al.*) in that underlying

case lodged the full amount of such lien in the Court Registry for the King County Superior Court, and DeCourseys sought to negotiate with Lane Powell. In response, Lane Powell sued and threatened to "pay $800,000 in fees in this suit to recover $300,000" [sic]. DeCourseys counter-sued for breach of contract.

DeCourseys have since been operating *pro se* against aggressive counsel. The Respondent has sought **all** communications the DeCourseys had with anyone about their real estate lawsuit, including specifically privileged communications, including confidential and highly personal communications the DeCourseys had with Respondent and confidences shared with Respondent as their attorneys throughout the four years of their interactions. On April 27, 2012, the trial court issued an Order declaring the attorney client privilege universally waived on all communications between DeCourseys and Respondent,[1] and ordering all such documents to be provided to Respondent by 4:00 p.m. this Thursday, May 3, 2012 (even though Respondent already has them all). The Court had earlier denied a protective order to DeCourseys so that such disclosure

[1] DeCourseys do not object to providing documents relevant to the contract and fee dispute, and Lane Powell's performance thereunder. In accordance with ER 502, which the Court cited in the March 2, 2012 Order, waiver of privilege is subject by subject, in contrast to Lane Powell's discovery request and the April 27 Order, which require a waiver of **all** privileged material, regardless of subject.

will come with no restrictions on the Respondent, who may then use the material to punish and abuse its former clients and to embarrass them or harass them into a settlement.

In the instant Order, the Court also found DeCourseys in contempt for not earlier producing records that they had no clue until now the trial court expected them to provide; they are ordered to pay attorney's fees and costs to their opponents and face other sanctions if they do not provide these records by 4:00 p.m. Thursday, May 3.

The Court's Order of April 27, 2012 contains no finding of fact supporting the involuntary and universal waiver of DeCourseys' privilege. This Court has nothing to review on the subject. Earlier Orders are silent on the subject of privilege, but the March 2, 2012 Order (the next most recent on the subject of discovery), requires DeCourseys to produce discovery materials "in accordance with CR 26(b) and ER 502." CR 26(b) states, "Parties may obtain discovery regarding any matter, not privileged." Then comes the order of April 27 waiving DeCourseys' privilege and sanctioning DeCourseys for not producing the privileged materials previously. This is a judicial track impossible for a litigant to follow, and clearly an abuse of discretion.

The April 27, 2012 Order also ordered the DeCourseys to lodge an additional $57,036.30 in pre-judgment interest in the Court Registry, not

identified in the lien, in the event the right to the lien amount was proven in the future. The DeCourseys had timely filed a Motion for Reconsideration of the Court's Order in January 2012 related to the lodging of such funds, and the Court has yet to grant or deny that motion. Nonetheless, the April 27, 2012 Order holds the DeCourseys in contempt and orders them to pay fees and fines for not earlier lodging such interest, and orders them to lodge these funds by 4:00 p.m. this Thursday or face further sanction. The DeCourseys maintain that the December 21, 2011 Order requiring the lodging of interest—that the Respondent has yet to show it is even entitled to receive—is inappropriate and unjustified. The trial court has yet to rule on its Motion for Reconsideration of such ruling, making the sanction and award of fees inappropriate and an abuse of discretion.

The DeCourseys received the trial court's Order in an unsigned fashion by email on Thursday, April 26, 2012. The signed order was not filed to the docket until Tuesday, May 1, 2012. In an abundance of caution, DeCourseys filed a Motion to Shorten Time and a Motion for Stay in the trial court on Monday, April 30, 2012 and served opposing counsel with a copy. See Declaration of Carol DeCoursey at ¶3 and **Exhibits A, B** and **C**, attached hereto. The DeCoursey filed their Notice for Discretionary Review directed to this Court with the Superior Court on

Tuesday, May 1, 2012, paid the $280 filing fee, and served the Notice on opposing counsel. See Carol DeCourseys' Decl, at ¶5 and **Exhibit E.**

To date, the trial court has yet to rule on the Motion for Stay of Case or the Motion to Shorten Briefing Time. At 4:00 p.m. on Thursday, May 3, 2012, the DeCourseys are obligated to disclose years of confidential highly personal communications to their opponents with no protective order or restriction on their use or dissemination, and to lodge $57,036.30 of their own money with the Court Registry, and in the near future to be forced to pay an undetermined amount of fees and costs to their opponents as a sanction for not having done something – disclosed those records or lodge that money – they contend they should not legally have been required to do and for which they had not been legally bound to do at any time prior to the April 27, 2012 Order, based on the Court's past rulings and the lack of a decision on their Motion for Reconsideration.

On January 3, 2012, DeCourseys requested ADA accommodation with the Superior Court in accordance with the instructions provided by Court personnel. The court took no action on that Request and did not acknowledge it despite multiple nudges and queries by DeCourseys, including filing the material with the Clerk under a GR 22 coversheet, in accordance with further (and improper) instructions from Court personnel. Finally on April 10, 2012, the Assistant Presiding Judge, Ms. Palmer

Robinson, wrote a letter to DeCourseys substantially denying their request.

Order of April 27 included Judge Palmer Robinson's April 10 letter to DeCourseys. The language in the Order suggests it was issued in retaliation for DeCourseys' Request: it states, "... having considered the ADA accommodation request ...," and then strips DeCourseys of attorney client privilege, requires the production of thousands of privileged documents, imposes sanctions, and threatens to dismiss DeCourseys' claims. The Court's response to DeCourseys' ADAAA Request was out of compliance with GR 33, the Federal *Americans with Disabilities Act Amendments Act*, and the Federal *Civil Rights Act* of 1964.

IV. GROUNDS FOR RELIEF AND ARGUMENT

Rules on Appeal 17.4(b) allows "in an emergency, a person may request expedited consideration of a motion." Pursuant to RAP 17.4(b), the DeCourseys attach the Declaration of Carol DeCoursey confirming that this Motion for Stay was hand served to opposing counsel on May 2 by 9:00 a.m.

The above facts explain why the Motion should be considered on an emergency basis. If this Motion for Stay is not considered on an emergency basis, it cannot be decided before the date the Order commands performance and the DeCourseys risk being held in further contempt and

subject to further sanction, including having their claims dismissed or judgment entered against them. The DeCourseys filed an appeal within one day of receiving a signed copy of the order and immediately sought a stay in the trial court. The trial court has yet to decide that motion, and the DeCourseys' Motion for Discretionary Review is not due for 15 days after filing of their Notice. This Court should grant this Emergency motion for Stay to give the parties the breathing room needed to brief the issue of discretionary review and for this Court to determine whether it should accept discretionary review.

The April 27, 2012 Order came after months of waiting for a decision on a Motion for Reconsideration, which never came, and with no prior indication that the Court intended DeCourseys' privilege had been waived and privileged communications were to be disclosed.

Given the trial courts' own delay in handling these matters, there is no harm or prejudice to the Respondent while waiting a few more weeks for this Court to decide whether an appeal is appropriate, and significant irreparable harm to the DeCourseys if the stay is not granted and they are forced to comply with the Order.

V. CONCLUSION

For the foregoing reason, the Court of Appeals should grant the Emergency Motion for Stay and stay the April 27, 2012 Order, pending a

determination of the Motion for Discretionary Review, and, if accepted, pending the conclusion of the appeal.

Dated this 2nd day of May, 2012.

Submitted by:

Carol DeCoursey, pro se

Mark H. DeCoursey, pro se

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on May 2, 2012, I delivered a copy of the foregoing Emergency Motion for Stay by hand delivery to the following:

Robert Sulkin
McNaul Ebel Nawrot & Helgren PLLC
One Union Square
600 University Street, Suite 2700
Seattle, Washington 98101-3143

Dated this 2nd day of May, 2012, at Redmond, Washington.

Carol DeCoursey

Exhibit J

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

May 18, 2012

Michele Lynn Earl-Hubbard
Allied Law Group LLC
PO Box 33744
Seattle, WA, 98133-0744
Michele@alliedlawgroup.com

Carol Decoursey Mark Decoursey
8209 172nd Ave NE
Redmond, WA, 98052

Malaika Marie Eaton, Robert M. Sulkin
McNaul Ebel Nawrot & Helgren PLLC
600 University St Ste 2700
Seattle, WA, 98101-3143
meaton@mcnaul.com

CASE #: 68671-2-I
Lane Powell, PC, Res. v. Mark Decoursey and Carol Decoursey, Pet..

Counsel:
The following notation ruling by Commissioner Mary Neel of the Court was entered on May 17, 2012:

Petitioner DeCoursey's motion for extension of time to May 25, 2012 to file their motion for discretionary review is granted. DeCoursey's shall confer with opposing counsel and note the motion for discretionary review at 9:30 a.m. on a Friday morning commissioner's calendar. In their motion the DeCourseys shall address the scope of review, as it appears that their notice of discretionary review is untimely as to the November 2011 and December 2011 orders listed in the notice. Their request to file an overlength motion is denied.
The DeCourseys motion for stay pending review of the April 27, 2012 trial court order on Lane Powell's motion to compel and for contempt is denied at this time. The DeCoursey's have a motion for stay pending in the trial court. Moreover, the DeCoursey's have not identified the Rule of Appellate Procedure under which they seek a stay, demonstrated that a stay is warranted, or taken steps to stay enforcement of the trial court order by posting supersedeas. The temporary stay entered by this court on May 2, 2012 is lifted.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk
twg

Exhibit K

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

LANE POWELL PC, etc.,

Plaintiff,

v.

MARK DECOURSEY and CAROL DECOURSEY, etc.,

Defendants

NO. 11-2-34596-3 SEA

ORDER RE: DEFENDANTS' MOTION TO STAY

(CLERK'S ACTION REQUIRED)

On Friday June 1, 2012 this Court received a copy of the Court of Appeals' notation ruling denying Defendants' motion to stay filed in that Court. The motion to stay filed in this Court has not been addressed. The motion in this Court was filed on April 30, 2012, and noted for Hearing on May 1, 2012. Plaintiff's Response was filed on May 1, and Defendants' Reply was filed on May 2, 2012. Defendants also filed a motion to shorten the briefing time on the motion to stay, which motion was scheduled to be considered on May 1, 2012. The motion to shorten time is DENIED as moot. All briefs relating to the motion to stay have been filed.

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

The Court of Appeals issued a Stay Order on May 2, 2012, before a ruling was issued on the motion for stay filed in this Court. Since the Court of Appeals has now lifted its Stay Order, this Court will address the motions outstanding in this Court, and will do so without oral argument, any requests for which are DENIED.

In their Reply with respect to their motion to stay, Defendants argue that this Court's December 21, 2011 Order to deposit funds into the court registry is in abeyance because their motion for reconsideration has not been ruled on. While this Court does not agree that the December 21, 2011 Order is in abeyance, Defendants' Motion for Reconsideration of that Order is hereby DENIED, and Defendants' are further ORDERED to comply with all the terms of the December 21, 2011 Order forthwith, reserving any claims for damages or terms for non-compliance with that Order that Plaintiff may file.

Defendants' Motion to Stay Pending Appellate Review is also DENIED. Defendants do not provide any legal basis to stay the proceedings in this Court, nor does any basis or reason to stay this matter appear to the Court.

DATED this 4th day of ~~MAY~~ JUNE, 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

Exhibit L

Hayley Montgomery

From: Malaika Eaton
Sent: Thursday, June 14, 2012 9:40 AM
To: Hayley Montgomery
Subject: FW: hearing date for Motion for Discretionary Review in DeCoursey appeal

Here is the email chain I was talking about in case you do not have it.

From: Malaika Eaton
Sent: Friday, June 08, 2012 8:47 AM
To: Malaika Eaton; Mark DeCoursey; Carol DeCoursey
Cc: Robin Lindsey
Subject: RE: hearing date for Motion for Discretionary Review in DeCoursey appeal

Mr. and Mrs. DeCoursey:

We have received no response from you regarding your intentions as to compliance with the court's orders. Again, please let us know ASAP what your intentions are with respect to this issue.

Malaika Eaton

From: Malaika Eaton
Sent: Wednesday, June 06, 2012 11:38 AM
To: 'Mark DeCoursey'; Carol DeCoursey
Cc: Robin Lindsey
Subject: FW: hearing date for Motion for Discretionary Review in DeCoursey appeal

Mr. and Mrs. DeCoursey -- Attached is an order from the trial court that we just received denying your motion to stay. As indicated below, Ms. Earl-Hubbard asked that we send it directly to you. Please let us know quickly your intentions regarding compliance with the court's orders.

Thank you,

Malaika Eaton

From: Michele Earl-Hubbard [mailto:michele@alliedlawgroup.com]
Sent: Wednesday, June 06, 2012 11:33 AM
To: Malaika Eaton; Robin Lindsey; info
Cc: Hayley Montgomery; Robert Sulkin; Melissa Raynor-Redmond
Subject: RE: hearing date for Motion for Discretionary Review in DeCoursey appeal

I represent them solely for the appeal so please send this to them thank you.

Michele Earl-Hubbard
ALLIED LAW GROUP
Mailing address:
P.O Box 33744
Seattle, WA 98133
(206) 801-7510 phone

(206) 428-7169 fax
michele@alliedlawgroup.com
www.alliedlawgroup.com

From: Malaika Eaton [mailto:MEaton@mcnaul.com]
Sent: Wednesday, June 06, 2012 11:27 AM
To: Michele Earl-Hubbard; Robin Lindsey; info
Cc: Hayley Montgomery; Robert Sulkin; Melissa Raynor-Redmond
Subject: RE: hearing date for Motion for Discretionary Review in DeCoursey appeal

Attached is an order from the trial court that we just received denying the DeCourseys' motion to stay. Are you representing the DeCourseys solely for the appeal? If so, we will send this order directly to them consistent with our previous agreement with them. If you are representing them before the trial court as well, we trust that you will advise them of their continuing obligation of prompt compliance with the trial court's orders.

Thanks,

Malaika Eaton

From: Michele Earl-Hubbard [mailto:michele@alliedlawgroup.com]
Sent: Wednesday, June 06, 2012 10:28 AM
To: Robin Lindsey; info
Cc: Malaika Eaton; Hayley Montgomery; Robert Sulkin; Melissa Raynor-Redmond
Subject: RE: hearing date for Motion for Discretionary Review in DeCoursey appeal

Ok, I agree no follow up by mail unless the overall filing/service (including appendices) is 250 pages or more. A pdf of more than 50 pages may not make it through by email, however, so I recommend we all turn on read receipts and agree to accept the read receipt when requested so we can tell something made it through. We may also want to break up large pdfs into 50 page or so pdfs and send them in a series of emails but we can test it and see what works with our firms' email systems before coming to an agreement on specific page size of a pdf attachment.

Could I trouble you to forward by email broken down like this into smaller pdfs the 1400 or so page appendix you filed with your Response to the Motion for Stay before my involvement?

I will note the hearing today.

Michele Earl-Hubbard
ALLIED LAW GROUP
Mailing address:
P.O Box 33744
Seattle, WA 98133
(206) 801-7510 phone
(206) 428-7169 fax
michele@alliedlawgroup.com
www.alliedlawgroup.com

From: Robin Lindsey [mailto:RLindsey@mcnaul.com]
Sent: Wednesday, June 06, 2012 9:49 AM
To: Michele Earl-Hubbard; info@alliedlawgroup.com
Cc: Malaika Eaton; Hayley Montgomery; Robert Sulkin; Melissa Raynor-Redmond

Subject: RE: hearing date for Motion for Discretionary Review in DeCoursey appeal
Importance: High

Michele,

Thank you for your email of June 5, 2012. We are agreeable to electronic service in this matter, as that was our manner of service with Mr. and Mrs. DeCoursey. You suggested that we follow up our electronic service with hard copies by mail; we don't necessarily need a hard copy by mail unless the document is unusually voluminous (250 pages or larger), so we would suggest exchanging additional hard copies only in these instances. On the other hand, if your preference is to receive an additional follow-up hard copy by mail regardless of size, we are happy to oblige.

Following are email addresses for electronic service:

meaton@mcnaul.com
rsulking@mcnaul.com
rlindsey@mcnaul.com
hmontgomery@mcnaul.com
mraynor-redmond@mcnaul.com

Finally, we are agreeable and available for a hearing on August 17, 2012, at 9:30 a.m.

Please let us know if you have any further questions or concerns in this regard. Thank you.

Robin M. Lindsey | Legal Assistant to
Robert M. Sulkin, Malaika M. Eaton, and Barbara H. Schuknecht
McNaul Ebel Nawrot & Helgren PLLC
600 University St., Suite 2700 | Seattle, WA 98101-3143
D 206 389-9359 | **F** 206 624-5128 | **O** 206 467-1816
rlindsey@mcnaul.com

From: Hayley Montgomery
Sent: Tuesday, June 05, 2012 3:56 PM
To: Melissa Raynor-Redmond; Robin Lindsey
Cc: Malaika Eaton
Subject: FW: hearing date for Motion for Discretionary Review in DeCoursey appeal

FYI

From: Michele Earl-Hubbard [mailto:michele@alliedlawgroup.com]
Sent: Tuesday, June 05, 2012 3:57 PM
To: Robert Sulkin; Malaika Eaton; Hayley Montgomery
Subject: hearing date for Motion for Discretionary Review in DeCoursey appeal

Dear Counsel: Division One has informed me that their next available dates for a hearing on the 9:30 a.m. Friday Commissioner's calendar are 7/27/12 and 8/17/12. (They are full for every other date. They do not have hearings every week now with just the single commissioner.)

I have a previously-scheduled summary judgment hearing at 9:30 a.m. in a different case on 7/27 that cannot be moved as it involves dueling motions from both parties and we have been coordinating for months to get this agreed-upon date. I am available on 8/17, however.

Please email me ASAP and confirm you are available for Friday August 17, 2012 at 9:30 a.m. so I may promptly

note the motion for hearing. As I was instructed to coordinate the date with you, I am not noting it until I hear from you, but delay will likely lead to this slot becoming available as well so speed is appreciated.

Also, I noted that the Certificate of Service for your response had the wrong physical address on it, although it got delivered to the right location. I understand you had an email service agreement with my clients at times. If you are interested in entering into such an agreement with me, please let me know. By email service agreement, I mean that we can each serve each other by email with an identical pdf of materials that are filed and the email service is effective as of the date of emailing so long as the email address used was correct regardless of when it is actually read. We can each designate multiple email addresses to receive our service email, and a hard copy does go out by U.S. Mail the same day as email service. For me, email addresses would be this one (Michele@alliedlawgroup.com) and info@alliedlawgroup.com

My mailing address is actually the PO box listed on my pleadings and not the Seaview Ave. physical address you actually served.

Let me know if you are interested in an email service agreement such as this and let me know right away please if you are available for the 8/17 at 9:30 a.m. hearing so I can get it noted.

Thank you.

Michele Earl-Hubbard
ALLIED LAW GROUP
Mailing address:
P.O Box 33744
Seattle, WA 98133
(206) 801-7510 phone
(206) 428-7169 fax
michele@alliedlawgroup.com
www.alliedlawgroup.com

Exhibit M

NO. 68671-2-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

MARK DeCOURSEY and CAROL DeCOURSEY,

Defendants/Petitioners

v.

LANE POWELL, PC

Plaintiff/Respondent

DECOURSEYS' SECOND MOTION FOR STAY OF ORDERS

Michele Earl-Hubbard
WSBA No. 26454
Allied Law Group LLC
P.O. Box 33744
Seattle, WA 98133
(206) 443-0200 (Phone)
(206) 428-7169 (Fax)

ALLIED LAW GROUP

I. IDENTITY OF MOVING PARTY

Appellants Mark & Carol DeCoursey ("DeCourseys") request that the Court of Appeals issue a stay in this action below, Case No. 11-2-34596-3 SEA, of enforcement of or further motions or proceedings relating to, the four Orders noted in their Amended Notice for Discretionary Review filed in this Court and the Superior Court on 5/7/12, and attached hereto as **Appendix A** This request is made pursuant to RAP 8.1(b)(3).

II. STATEMENT OF RELIEF SOUGHT

On 4/27/12 the King County Superior Court filed an Order with multiple parts. (This Order is included in **Appendix A** hereto as **Exhibit A** to the Amended Notice of Discretionary Review). That Order did the following: (1) waived the attorney client privilege between DeCourseys and Lane Powell ("LP"); (2) ordered DeCourseys to produce all documents on the basis of that waiver; (3) found DeCourseys in contempt of court for not producing documents in discovery in accordance with that previously-unstated waiver; (4) sanctioned DeCourseys for the foregoing; (5) found DeCourseys in contempt for not posting $57,036.30 in prejudgment interest (not enumerated in the Lien at issue) to the registry of the court while awaiting reconsideration of the order for the posting of same; (6) levied sanctions on DeCourseys for not depositing the interest;

and (7) threatened further sanctions if DeCourseys do not immediately comply with the above, up to and including imprisonment, fines, and dismissal of claims and defenses.

On 5/1/12 DeCourseys filed a Notice of Discretionary Review to this Court of the 4/27/12 Order and selected precursor orders on which the contempt and sanction were based.

On 5/2/12 the Superior Court denied the Motion for Reconsideration of the Order regarding the lodging of interest, denying reconsideration after holding DeCourseys in contempt for not earlier complying with the order while it was under reconsideration.

On 5/7/12 DeCourseys filed an Amended Notice of Discretionary Review adding this denial of reconsideration order to its Notice and requested review.

On 5/2/12 DeCourseys asked this Court for a stay of the 4/27/12 Order pending discretionary review. On 5/18/12 this Court denied the stay, noting that DeCourseys: (1) had asked the superior court for a stay on the subject Order and that the superior court had not yet responded; (2) had not demonstrated a stay was warranted; (3) had not identified a Rule of Appellate Procedure under which they sought a stay; and (4) had not posted a supersedeas bond. (Ruling denying DeCourseys' motion to stay is attached hereto as **Appendix B.**) This Court then set a briefing schedule

for the Motion for Discretionary Review and has set oral argument of such Motion for 8/17/12 at 9:30 a.m.

Thus, the parties will not know until after the 8/17/12 hearing whether or not discretionary review will be granted in this case.

On 6/4/12 the superior court denied the Motion to Stay Pending Appellate Review. (Order Re: Defendants' Motion to Stay is attached hereto as **Appendix C**.)

On 6/22/12 DeCourseys obtained a supersedeas bond in the amount of $57,036.30, the amount currently ordered in payment by the superior court. Bond is attached hereto as **Appendix D**.

DeCourseys file this second motion for a stay to allow this Court to hear the Motion for Discretionary Review on 8/17/12 and to rule on such motion before any further action can occur on the enforcement of the contempt or the issues being appealed. This Motion will demonstrate that a stay is warranted.

III. GROUNDS FOR RELIEF AND ARGUMENT

RAP 8.1(b)(3) states in evaluating whether or not to grant a stay that the appellate court shall:

> (i) consider whether the moving party can demonstrate that debatable issues are presented on appeal and (ii) compare the injury that would be suffered by the nonmoving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed.

RAP 8.1(b)(3). Here DeCourseys establish why these two considerations weigh completely in favor of granting the stay and against its denial.

A. Debatable Issues are Presented on Appeal

1. Discovery Orders

There are debatable issues presented in this appeal regarding the discovery orders and the contempt Order related to those discovery orders. At the heart of the discovery orders is the issue of alleged waiver of attorney client privilege and the acceptability of compelled production and contempt findings, when previous protective orders and restrictions on use and abuse of such records have been denied.

The rationales for creating and protecting attorney client privilege are well known.

> If the client is assured that what she says to an attorney cannot later come back to harm her, she will be more open and candid in her communications with the attorney—that is, willing to communicate things that she otherwise would suppress. {footnote: See, e.g., Fisher v. United States, 425 U.S. 391, 403 (1976) (discussing the importance of full disclosure between an attorney and client in our adversarial justice system)} Consequently, the attorney will be better informed, will be able to give more accurate advice, and the client will be better able to conform her conduct to the law.

Paul Rice, *Attorney-Client Privilege*, **American University Law Review**, Volume 48 Issue 5 June 1999 Article 1, attached hereto as **Appendix E**. The privilege is protected by State law (RCW 5.60.060), Rules of Evidence (ER502), Civil Rules (CR26(b)), and numerous court decisions

in every jurisdiction.

Courts have spoken emphatically and eloquently about the privilege and its fundamental role in American jurisprudence:

> Our review of authorities herein discussed demonstrates that at the base of the attorney-client privilege lies the policy that one who seeks advice or aid from a lawyer should be completely free of any fear that his secrets will be uncovered. The privilege, one of ancient origin, was recognized in England in the reign of Elizabeth I, but was then founded upon the honor of the attorney rather than in the apprehensions of his client. See 8 **Wigmore on Evidence** §§ 2290-2291 (McNaughton rev. ed. 1961); **People ex rel. Vogelstein v. Warden of County Jail**, supra, 150 Misc. at pp. 714, 716-717, 270 N.Y.S. 362.

United States v. Grand Jury Investigation, 401 F. Supp. 361, 369 (W.D. Pa. 1975) attached hereto as **Appendix U**.

> The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law. 8 J. Wigmore, **Evidence** § 2290 (McNaughton rev. 1961). Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client.

Upjohn Co. v. United States, 449 U.S. 383, 389, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981) attached hereto as **Appendix V**.

> The purpose of the attorney-client privilege "`is to encourage free and open attorney-client communication by assuring the client that his communications will be neither directly nor indirectly disclosed to others.'" **Heidebrink v. Moriwaki**, 104 Wn.2d 392, 404, 706 P.2d 212 (1985) (quoting **State v. Chervenell**, 99 Wn.2d 309, 316, 662 P.2d 836 (1983)); see also **State ex rel. Sowers v. Olwell**, 64 Wn.2d 828, 394 P.2d 681, 16 A.L.R.3d 1021 (1964). The attorney-

> client privilege applies to communications and advice between an attorney and client and extends to documents which contain a privileged communication. **Kammerer v. Western Gear Corp.**, 27 Wn.App. 512, 517-18, 618 P.2d 1330 (1980), aff'd,96 Wn.2d 416, 635 P.2d 708 (1981).

Pappas v. Holloway, 114 Wn.2d 198, 205, 787 P.2d 30 (1990).

Washington has carefully defined the limits of the privilege: If a client attempts to use the privilege against the attorney to work a fundamental injustice, the privilege is limited–but only to that extent.

> Where it would be manifest injustice to allow the client to take advantage of the rule of privileges to the prejudice of the attorney, or when it would be carried to the extent of depriving the attorney of the means of obtaining or defending his own rights, this court has ruled the privilege is waived. **Stern v. Daniel**, 47 Wn. 96, 98, 91 P. 552 (1907).

Pappas, 114 Wn.2d at 203.

When courts nullify the privilege, they threaten the fabric of the justice system. If nullification became common, the mere threat would destroy the privilege's value:

> Clients consult attorneys for a wide variety of reasons, many of which involve confidences that are not admissions of crime, but nonetheless are matters the clients would not wish divulged. ... Balancing ex post the importance of the information against client interests, even limited to criminal cases, introduces substantial uncertainty into the privilege's application and therefore must be rejected.

Swidler & Berlin v. United States, 524 U.S. 399, 118 S.Ct. 2081, 141 L.Ed.2d 379 (1998), attached hereto as **Appendix W**.

Even in legal malpractice cases, privilege waiver must be handled

carefully and selectively:

> We agree with the concerns raised in **Jakobleff**[1] regarding the danger of making illusory the attorney-client privilege in legal malpractice actions. ... In **Hearn v. Rhay**, 68 F.R.D. 574 (E.D. Wash. 1975), the United States District Court for Eastern Washington developed a test to determine whether the facts in a given case support an implied waiver of the attorney-client privilege. The plaintiff in **Hearn**, an inmate at the Washington State Penitentiary in Walla Walla, sued state prison officials in their official capacity for alleged civil rights violations. **Hearn**, at 576-77. The defendants raised the affirmative defense of qualified immunity from suit on the grounds they acted in good faith and on advice of their legal counsel. **Hearn**, at 577. When plaintiff requested disclosure of communications between defendants and their attorneys, defendants refused to comply on the grounds the communications were protected under the attorney-client privilege. **Hearn**, at 577. Plaintiff argued the attorney-client privilege did not cover the communications, or, in the alternative, that defendants waived the privilege by asserting their good faith affirmative defense. **Hearn**, at 580. In holding defendants were required to disclose the communications, the trial court concluded that where the following three conditions are satisfied, an implied waiver of the attorney-client privilege should be found: (1) assertion of the privilege was the result of some affirmative act, such as filing suit, by the asserting party; (2) through this affirmative act, the asserting party put the protected information at issue by making it relevant to the case; and (3) application of the privilege would have denied the opposing party access to information vital to his defense. **Hearn**, at 581.

Pappas, 114 Wn.2d at 206-07.

All three conditions must be satisfied to pass the **Hearn** test. In the instant case, though DeCourseys argued **Hearn** repeatedly, neither the superior court nor LP ever addressed the test.

---

[1] **Jakobleff v. Cerrato, Sweeney & Cohn**, 97 A.D.2d 834, 468 N.Y.S.2d 895 (1983), attached hereto as **Appendix X.**

Ordering a waiver of privilege is not normally within the prerogative of a court without a careful finding of fact and ruling of law. The Order at issue here declaring privilege waived contains no findings of fact or legal citation. The superior court, with no discussion of the thousands of records produced by DeCourseys or the fact that all records sought were already possessed by LP, has ordered DeCourseys to produce everything to LP, held them in contempt, and sanctioned them—all in an order, which for the first time, held the privilege was waived.

DeCoursey Damages: This case is a contract, service, and fee dispute between DeCourseys and LP. LP was DeCourseys' attorney during a four year lawsuit against Windermere Real Estate. DeCourseys eventually prevailed and paid LP more than $313,000 in fees and costs before running out of money. In the process, LP failed to claim treble damages under the CPA, failed to seek recovery for fees and costs it nonetheless seeks to collect from DeCourseys, refused to appeal decisions that impacted reimbursement of additional costs to DeCourseys, gave away other monetary awards in positions it asserted on appeal and below, and demanded payment at rates never agreed to by DeCourseys including rates the Supreme Court had declared to be unreasonable in fee awards in that case. LP also gave DeCourseys erroneous advice regarding the tax implications of the Judgment or to structure the recovery in such a way as

to minimize that impact subjecting DeCourseys to a potential $150,000 IRS tax exposure on the fees awards. When LP sued DeCourseys to collect the fees and costs it contends are still owed, DeCourseys brought these counter claims.

Of course a dispute between attorneys and their former clients must involve public disclosure of many of the facts about the representation in court and in discovery. DeCourseys have indicated to the Court and to LP that under ER 502, DeCourseys were waiving privilege on all contract and attorney performance matters, and have produced more than 12,000 pages of documents.

However, on the very day LP filed suit, it demanded DeCourseys waive **all** privilege on **all** topics. Served on 10/5/11 with the Complaint, LP's First Set of Interrogatories and Requests for Production requested "any and all documents referring to or relating to the Windermere lawsuit," "any and all documents reflecting or relating to your communications with Plaintiff," and "any and all documents referring or relating to Lane Powell's representation of you." (Plaintiff's First Set of Interrogatories and Requests for Production to Defendants (page 9) is attached hereto as **Appendix F**.) LP would later claim DeCourseys waived **all** privilege on **all** subjects on 10/25/11 when DeCourseys filed counterclaims.

At the same time as it served the summons, LP served notices of videotape depositions of both Mark and Carol DeCoursey (Notice of Videotaped Depositions of Mark and Carol DeCoursey are attached hereto as **Appendix G**) but canceled the depositions when it learned that DeCourseys would be asserting privilege in accordance with CR 26(b). (Plaintiff's Motion to Compel Defendants' Responses to Plaintiff's First Set of Discovery Requests, 1/24/12, attached hereto as **Appendix H**, page 3, line 10-13.).

On 12/12/11 the superior court ordered (in part): "... the core schedule and **civil rules will govern discovery**." (Order on Defendants' Amended Motion for Discovery Plan Pursuant to CR 26(f) is attached hereto as **Appendix I**, emphasis added)

On 3/2/12 the Court filed an order stating:

> DeCourseys must respond to discovery requests in full with evidence and materials in accordance with this Court's order of 2/3/2012 **in accordance with CR 26(b) and ER 502**.

(Order on Motion to Reconsider Order Compelling Discovery of Privileged Materials is attached hereto as **Appendix J**, emphasis added.) CR 26(b) puts privileged materials outside the scope of discovery. ER 502 provides for selective waiver of privilege by subject.

By 3/9/12 DeCourseys had produced more than 12,000 pages of responsive documents, withholding only privileged material that is not

relevant to the contract, service, fees, claims, and defenses of the parties. Hence, DeCourseys contend they were in full compliance with those orders.

LP obtained the 4/27/12 contempt and waiver Order by failing to mention DeCourseys' 12,000 pages of responsive documents, and arguing instead that DeCourseys waived attorney client privilege on **all** subjects by the following: (1) filing a malpractice claim against an attorney as matter of "black letter law," (2) the Court's denial of DeCourseys' Motion for Discovery Protection under CR 26(c) (11/18/11, **Appendix K**), (3) the Court's denial of DeCourseys' Amended Motion for Discovery Plan under CR 26(f) (12/12/11, **Appendix I**), (4) the Court's denial of DeCourseys' Motion for Reconsideration of Discovery Protection (12/30/11, **Appendix L**), (5) The Court's Order on Plaintiff's Motion to Compel Discovery (2/3/12, **Appendix M**), and (6) the Court's Order on Motion to Reconsider Order Compelling Discovery of Privileged Materials (3/2/12, **Appendix J**).[2]

As evidence of the last, LP quoted the 3/2/12 Order, but deleted the words protecting DeCourseys' privilege: "**in accordance with CR 26(b) and ER 502.**"

[2] This list of arguments is found in Plaintiff's Motion for Order of Contempt or Rule 37 Sanctions for Failure to Respond to Plaintiff's First Set of Discovery Requests as Ordered, 3/8/12, attached hereto as **Appendix N**, pages 3-4.).

> In that Order, the Court required the DeCourseys to "respond to discovery requests in full with evidence and materials in accordance with this Court's order of February 3, 2012." Ex B at 2.

Appendix N, page 4, line 12-15.) LP then went on to actually **deny** the phrase was part of the order:

> The Court likewise struck the DeCourseys' proposed language relating to the attorney-client privilege.

(**Id.**) LP thus obtained a contempt finding against DeCourseys by misquoting and mischaracterizing the orders for which DeCourseys were subsequently found in contempt.

As DeCourseys have more fully explained in their Motion for Discretionary Review and the Reply for same, there are clearly debatable issues presented on appeal concerning the discovery orders. Namely: whether the court was correct in (1) its broad holding that **all** attorney client privilege has been waived, (2) compelling DeCourseys to produce emails with LP that LP already has, (3) holding DeCourseys in contempt for not producing those records, (4) deeming them in violation of some unnamed and undated order that was allegedly contrary to the 12/12/11 Order that "civil rules will govern discovery" and the 3/2/12 Order that required them to produce records "in accordance with CR 26(b) and ER 502," which specifically preserve privilege, and (5) levying sanctions and holding them in contempt for producing responsive documents in compliance with what they understood to be the terms of the 12/12/11 and

3/2/12 Orders.

2. Prejudgment Interest Orders

There are also debatable issues on appeal regarding the lodging of "interest" Order, the denial of the motion for reconsideration of this Order, and the holding of DeCourseys in contempt for allegedly violating the lodging Order by not lodging at a time when the Order was under reconsideration and for which reconsideration was not denied until days after DeCourseys were held in contempt.

DeCourseys have already paid LP more than $313,000 at the trial court stage on a case where LP told them the fees through trial would not exceed $100,000. In 2008, when DeCourseys were unable to pay any more than $313,000, LP agreed not to attempt to collect until "payment on the judgment or settlement." (LP letter of 12/5/08 attached as **Appendix O**; 12/30/08 Letter of Agreement attached as **Appendix P**.) After LP damaged DeCourseys as told on page 8, "DeCoursey Damages," DeCourseys dismissed LP and obtained different counsel on remand. In violation of the contract, LP sued DeCourseys for its inflated invoice a month before the final judgment was filed.

At the request of the judgment debtor, DeCourseys voluntarily put $384,881.66 of the Judgment in the registry of the court, which was the full amount enumerated on the 8/3/11 Attorney's Fee Lien (attached

hereto as **Appendix Q**) LP served on them when the firm was fired. This lodging was done before any payment was received by DeCourseys of the remaining Judgment amount. In the 12/13/11 Plaintiff's Motion to Require Deposit of Funds into Court Registry (attached hereto as **Appendix R**, pages 1, 3), LP claimed DeCourseys had done something improper in lodging the full Lien Amount because they did not also lodge alleged future "interest" not enumerated in the Lien, the amount of which LP itself did not compute or name at the time of filing the Lien. On 12/21/11 LP obtained an order from the Court for lodging of the $57,036.30 arguing that the face amount of the Lien was not really the amount of the Lien, and that prejudgment interest should be included.[3] **Appendix R**, page 3, lines 14-22.

DeCourseys timely asked for a reconsideration of the Order, to be heard 1/29/12. The superior court was silent until 4/27/12 when it found DeCourseys in contempt for not lodging the money while the reconsideration motion was pending and ordered sanctions. On 5/2/12 the

[3] The lien is defined in the first sentence: "Notice is hereby given that the undersigned attorneys ... claim a lien... for services rendered ... and expenses incurred ... in the amount of not less than $384,881.66." So ends the first sentence. The second sentence explains that number: "The lien is for amounts due to Lane Powell, together with interest, for services performed in conjunction with an action before the trial and appellate courts." **Appendix Q**. The "interest" is clearly a component of the first figure named, not an additional amount. **Appendix R**, page 3, line 19.

court retrospectively issued an order denying the motion for reconsideration with these words, if it has not already been denied, is hereby DENIED," without canceling the order of contempt and sanctions signed a week earlier. (Order on Defendants' Motion to Reconsider the Court's Order to Deposit Funds, attached hereto as **Appendix S**.) The Court saw fit to deny the motion a second time on 6/4/12 giving no explanation for its action. **Appendix C**, page 2, lines 6-12.

DeCourseys contend that the contempt Order, lodging Order, and denial of reconsideration of the lodging Order present debatable issues on appeal. Those Orders implicitly find that the face amount on the Lien is not the amount of the Lien; despite clear requirements that to be valid a lien must have a specific amount identified, the trial court treated the Lien as valid beyond the amount identified in it. The trial court demanded that DeCourseys deposit "interest" in an amount LP claimed would accrue into the future through a trial on a debt LP has not yet shown it is owed, or owed in full, let alone that the interest it seeks to recover would be appropriate. Finally, the superior court held DeCourseys in contempt for failing to comply with an Order which was under reconsideration at the time of the contempt finding and for which reconsideration was not denied until a week later.

B. DeCourseys will be Irreparably Injured if a Stay is Not Granted Compared to a Minimal Impact on Lane Powell if a Stay is Granted.

1. Discovery Orders

If a stay is not granted, DeCourseys, will have two choices both of which will cause them irreparable injury. First, they can be forced to produce all records to LP to use against them free of any protective order or other restriction making review of the appropriateness of this action potentially moot and leaving them with no means to re-secure those secrets once they have been disclosed. Second, DeCourseys can continue to assert privilege for any secret and embarrassing confidences to their attorneys and become subject to further sanctions by the superior court, including a possible dismissal of claims and defenses, monetary fines, and imprisonment, again possibly rendering this review moot, and making the injury caused by such further sanction and contempt impossible to remedy.

Furthermore, permitting LP to use DeCourseys' confidences without restraint (as the current orders being appealed provide) would be damaging to DeCourseys' private lives in ways that cannot be measured or predicted. If LP is allowed to use without restrictions every confidence and embarrassing fact revealed to it during its representation of DeCourseys, the threat of disclosure will be used as a bludgeon to coerce a

quick and inequitable settlement or dismissal. If such a settlement or dismissal is coerced, having already suffered the harms described on page 8 of this motion ("DeCoursey Damages"), DeCourseys will be left with little of the actual damage award to repair their home and property, while hundreds of thousands of dollars in excess of the fees and costs awarded by the courts is consumed by LP.

Compared to this significant harm to DeCourseys if a stay is not granted, LP has never argued any real harm from the granting of a stay, nor is there any such harm likely. LP has argued that not having the contested documents has "stymied" and "prejudiced" its case (**Appendix N**; page 9, lines 19-26), and has prevented it from conducting depositions (**Appendix H**, pages 3, lines 11-13). LP is a large and sophisticated law firm, fully equipped to collect and retain every document, phone log, discovery item, email, and computer record of any case under its control. LP has never pleaded that it does not already have all the documents it requests. Its only argument for the massive discovery requests is that it needs to know what DeCourseys have. (**Appendix H**, page 3, line 24 et seq.)

But LP has this information, too. DeCourseys have produced all documents relative to the claims and defenses of the parties, and privilege logs for the rest. Thus, LP knows exactly what DeCourseys have. LP will

not be harmed in any way by a stay until this Court decides the Motion for Discretionary Review.

If review is granted, a stay of enforcement of the orders on appeal is necessary for the same reasons named above.

2. **Prejudgment Interest**

If enforcement of the orders related to the prejudgment interest is not stayed, DeCourseys will be seriously harmed. They have currently been held in contempt and sanctioned. They are subject to further punishment including imprisonment and fines or dismissal of claims and defenses in the lawsuit. Requiring the defendant to put up pre-judgment interest before the plaintiff has established a right to the principal sets a bad precedent. It sends the signal to the litigants that the trier of fact has already judged the case in favor of the alleged creditor without ever examining the actual bills, the quality of service, or the counterclaims at issue. It also depletes the litigation war chest with which this family might obtain counsel at the trial court level to oppose aggressive lawyers who are set on breaking them financially. After LP filed suit, its counsel stated it would pay $800,000 to collect the $300,000 [sic] at stake. (Email concerning phone call from Robert Sulkin to Paul Fogarty, 10/6/11, attached hereto as **Appendix T**.) That is, LP threatens to deplete the entire damages award to satisfy its invoice.

LP's $800,000 threat has so far made it impossible for DeCourseys to find a contingency fee lawyer to represent them. Taking another $57,036.30 from DeCourseys' award serves no other purpose than to handicap DeCourseys' ability to pay a lawyer and obtain effective access to the courts. Lodging $57,036.30 in pre-judgment interest for a debt LP has not proven it is owed prejudices DeCourseys.

The Order simply furthers LP's announced strategy to prevail with muscle rather than merit. If the courts diminish DeCourseys' access to the courts, DeCourseys will be irreparably injured.

Compared to the harms to DeCourseys, the grant of a stay regarding the lodging Order will have no impact on LP. The Order requires DeCourseys to deposit money to the registry of the court. No real benefit would come to LP by the presence of money in the registry, and therefore, no harm would come to LP by its absence. Money in the registry does not earn interest and cannot be used by either party.

The amount of interest LP claims its alleged lien is accruing is at nine percent (9%), a far greater rate than it could achieve on the open market today if it had possession of the money. LP's full claim, including the 9 percent interest alleged, is now preserved through a supersedeas bond, and a stay will cause it no injury. Thus, on balance, a stay of proceedings to determine whether LP is entitled to the interest the superior

court has ordered lodged and whether DeCourseys can be held in contempt and sanctioned for not lodging the money while the order to lodge was under reconsideration will have little impact on LP compared to the significant injury to DeCourseys if the stay is not granted.

IV. CONCLUSION

For the foregoing reasons, the Court should grant a stay of enforcement of or further motions or proceedings relating to, the four Orders noted in DeCourseys' Amended Notice for Discretionary Review filed in this Court and the Superior Court on 5/7/12 and attached hereto as **Appendix A**.

Respectfully submitted this 26th day of June, 2012.

Allied Law Group LLC

By: 
Michele Earl-Hubbard, WSBA #26454
Attorneys for Petitioners Mark and Carol DeCoursey

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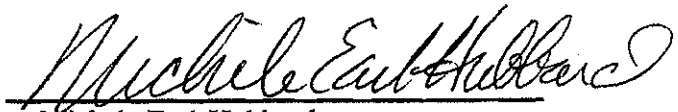
X. **Jakobleff v. Cerrato, Sweeney & Cohn**, 97 A.D.2d 834, 468 N.Y.S.2d 895 (1983).

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on Tuesday, June 26, 2012, I caused to be delivered by email pursuant to agreement a copy of the foregoing Second Motion for Stay and Appendices to:

Robert Sulkin
Malaika Eaton
Hayley Montgomery
Robin Lindsay
Melissa Raynor-Redmond
McNaul Ebel Nawrot & Helgren PLLC
One Union Square
600 University Street, Suite 2700
Seattle, Washington 98101-3143
rsulkin@mcnaul.com
meaton@mcnaul.com
rlindsay@mcnaul.com
hmontgomery@mcnaul.com
mraynor-redmond@mcnaul.com

Dated this 26th day of June, 2012 at Seattle, Washington.



Michele Earl-Hubbard

Exhibit N

BONDS cbic INSURANCE

SUPERSEDEAS AND COST ON APPEAL BOND

Home Office:
1213 Valley Street
P.O. Box 9271
Seattle, WA 98109-0271
(800) 765-CBIC National

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR KING COUNTY BOND NO. SJ5977

PREMIUM $

LANE POWELL PC, AN OREGON PROFESSIONAL CORPORATION

PLAINTIFF(S)

VS.

MARK DECOURSEY AND CAROL DECOURSEY, INDIVIDUALLY AND THE MARITAL COMMUNITY COMPOSED THEREOF

DEFENDANT(S)

SUPERSEDEAS AND COST ON APPEAL BOND

KNOW ALL BY THESE PRESENTS:
That we, MARK DECOURSEY AND CAROL DECOURSEY, INDIVIDUALLY AND THE MARITAL COMMUNITY COMPOSED THEREOF as Principal(s), and CONTRACTORS BONDING AND INSURANCE COMPANY, a corporation duly incorporated under the laws of the State of Washington and authorized to do business in the state of WASHINGTON, as Surety, are held and firmly bound unto LANE POWELL PC, AN OREGON PROFESSIONAL CORPORATION, as Obligee(s), in the penal sum of *FIFTY SEVEN THOUSAND THIRTY SIX AND 30/100* ($ 57,036.30) DOLLARS, lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, legal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Plaintiff(s), on 12/21/11 in the above entitled case, recovered judgment against said Defendant(s) in the sum of *FIFTY SEVEN THOUSAND THIRTY SIX AND 30/100* ($ 57,036.30) DOLLARS; and

WHEREAS, said Defendant(s) has (have) given due and proper notice of appeal from the above decision and judgment to the Court of Appeals or the KING SUPERIOR Court of the State of WASHINGTON.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if said Principal(s) shall pay, or cause to be paid, to the Obligee(s), all costs, interest and damages that may be awarded against them on the appeal, or on the dismissal thereof, and shall satisfy and perform the judgment or order appealed from in full, if for any reason the appeal is dismissed or the judgment affirmed, and shall satisfy in full such modification of the judgment or order as the court may ajudge and award, then this obligation shall be void, otherwise to remain in full force and effect.

SIGNED AND SEALED this 22ND day of June, 2012.

Carol De Coursey

MARK AND CAROL DECOURSEY Principal

APPROVED:

June, 2012

CONTRACTORS BONDING AND INSURANCE COMPANY

By

Judge

By

TERRY L. ROBINSON Attorney-in-Fact

CONTRACTORS BONDING AND INSURANCE COMPANY CORPORATE SEAL 1979 WASHINGTON

BndSCAB.01-WA042799

BONDS cbic INSURANCE

COLLATERAL RECEIPT AND AGREEMENT

Home Office:
1213 Valley Street
P.O. Box 9271
Seattle, WA 98109-0271

For the CBIC branch nearest you, call toll-free:
(888) 283-2242
(888) 293-2242 FAX

This agreement granting a security interest in certain property is made this 22nd day of June, 2012 by the undersigned (herein called Debtor) in favor of Contractors Bonding and Insurance Company (which does business in California as CBIC Bonding and Insurance Company) (herein called Secured Party or Surety). UNLESS NOTED OTHERWISE IN PARAGRAPH N BELOW, THIS AGREEMENT IS GIVEN TO SECURE ALL BONDING (PAST, PRESENT, AND FUTURE) FOR PRINCIPAL(S).

PRINCIPAL(S): MARK & CAROL DECOURSEY

DATE OF INDEMNITY AGREEMENT: 6/22/12

Description of Security: (check and complete as appropriate)

☑ 1. Cash in the amount of $ $FIFTY SEVEN THOUSAND THIRTY SIX AND 30/100"

☐ 2. Irrevocable Letter of Credit No. _____ Dated _____ in the amount of $ _____

issued by _____ (Bank).

☐ 3. Certificate of Deposit (or similar instrument entitled _____)

purchased in Secured Party's name, dated _____ in the amount of $ _____

from _____ (Bank).

☐ 4. A Deed of Trust or mortgage in certain real property dated: _____ and attached hereto as Exhibit A.

☐ 5. Stocks, Bonds or other securities described further in paragraph 7, including (i) all documents, instruments and other property in the possession of Secured Party in which the Debtor now has or hereafter acquires any right and (ii) all distributions with respect to and all proceeds of the property described in clause (i) including, without limitations, Stock Distributions.

☐ 6. Miscellaneous personal property described further in paragraph 7, which is primarily located in _____ (State).

☐ 7. Further description:

WHEREAS, in consideration of execution of the Bond(s) herein defined, or pursuant to Debtor's obligations to Secured Party under the Indemnity Agreement, or for other good and sufficient consideration, the Debtor has given to Secured Party the Security described herein,

NOW, THEREFORE, Debtor hereby represents, covenants and agrees with Secured Party as follows:

A. Definitions:

Affiliate: A person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with any Principal(s) named herein, any Indemnitor, or any Debtor.

Bond: Any obligation, or undertaking of guaranty or suretyship, express or implied, pursuant to which Secured Party is or may be made liable for any obligation of Principal (including but not limited to debts, defaults, actions, or failures to act), whether or not Principal is also liable.

Debtor: Any signator to this Agreement and any other person or entity providing the Security.

Given: Executed, granted, delivered, assigned, purchased for, pledged, conveyed or otherwise provided in whatever way appropriate to the Security.

Indemnitor: Any signator to any Indemnity Agreement (whether dated on, before, or after the date of this Agreement).

Indemnity Agreement: Any agreement (whether dated on, before, or after the date of this Agreement) wherein the signator promises, among other things, to reimburse Secured Party for Loss on any Bond executed for Principal, including, but not limited to, that Indemnity Agreement referenced herein. It also means any other agreement in connection with Bonds executed for any Principal, Indemnitor, or Debtor.

Liquidate: Taking or collecting and selling, negotiating, realizing upon or otherwise disposing of part or all of the Security in any method or form prescribed herein, or otherwise allowed by law, or appropriate to the Security being liquidated. Where appropriate, liquidate includes draws on Letters of Credit or demands for payment under an Assignment.

Loss: Any payment or expense either incurred or anticipated by Secured Party in connection with any Bond or this Agreement, including but not limited to: payment of bond proceeds or any other expense in connection with claims, potential claims, or demands; claim fees; penalties; interest; court costs; and attorney's fees (including but not limited to those incurred in defense of bond claims or pursuing any rights of indemnification or subrogation and any judgment arising from those rights).

Modification: Includes, but is not limited to, renewals, substitutions, riders, endorsements, reinstatements, replacements, increases or decreases in penal sum, continuations or extensions of Bond(s).

Principal: The person(s), or entity, or entities named above, or any Affiliate, or any one or combination thereof, or their successors in interest, whether alone or in joint venture with others named or not named herein, regardless of any changes in business organization or changes in name or tradename made after the date of this Agreement.

Secured Party: Either Contractors Bonding and Insurance Company or its California assumed name, CBIC Bonding and Insurance Company.

Security or Collateral: Any property, real or personal, given as collateral or security under this Agreement, any proceeds thereof, any substitution for such security accepted by Secured Party or proceeds thereof, and any additional security or proceeds thereof required by Secured Party hereafter. Proceeds shall include but not be limited to insurance proceeds from any insurance covering the Security, whether or not such insurance is required under this Agreement.

Stock Distributions: All substitutions and exchanges for and all distributions with respect to stock and rights relating to stock included among the Security, including but not limited to stock and cash dividends, stock splits, readjustments, reclassifications, options, and warrants.

B. The Security given herein is to secure reimbursement of Secured Party for all Loss and to secure performance of the Indemnity Agreement; all covenants, terms and conditions of the Indemnity Agreement are incorporated herein as if fully set forth. Where applicable, all terms and conditions of Exhibit A are also incorporated herein as if fully set forth.

C. With respect to the property given as Security:
   (1) Release of Security
      (a) Secured Party is entitled to retain the Security until its exposure to Loss shall cease as a matter of law.
      (b) Further, Secured Party shall release the Security only if all obligations owing to Secured Party by any Debtor, Principal or Indemnitor have been satisfied.
      (c) Release of Security shall not excuse any obligation owing, herein or elsewhere, to Secured Party by any Debtor, Indemnitor, or Principal.
   (2) Secured Party may Liquidate the Security at its sole option:
      (a) At any time Secured Party (in connection with any Bond):
         (1) Pays any Loss or expense;
         (2) Incurs or is threatened with any liability for Loss or expense whether or not Secured Party sets a reserve for Loss;
         (3) Pays or incurs any expense in enforcing its rights in, collecting, conserving or protecting any of the Security;
         (4) Makes demand for additional security as provided in paragraph F(4) hereof, which demand is not complied with within 5 days;
         (5) Is owed any premiums on any Bond;
         (6) Deems itself insecure;
         (7) Determines that any Principal or Indemnitor is in default of any obligation under any Indemnity Agreement;
         (8) Determines that any Debtor is in default of any provision of this Agreement or any other collateral agreement given by Debtor;
         (9) Discovers the falsity of any representation herein or in any other statement(s) oral or written, given or made by any Debtor, Principal, or Indemnitor; or
         (10) Determines that Debtor is in default of any provision of any Deed of Trust given as Security.
      (b) Where applicable, when described in paragraph J.
      (c) By any means provided for in this Agreement or otherwise provided for by law.
   (3) Secured Party shall have no obligation, but may at its sole Option:
      (a) Do anything for the conservation, protection, enforcement or collection of the Security;
      (b) Fill in all blanks in any transfers of Security, powers of attorney or other documents delivered to it in connection with Bond(s) or the Security, including this Agreement; or
      (c) Transfer to itself all or any part of the Security as agreed herein.

D. In the event of Liquidation of the Security by Secured Party:
   (1) Secured Party may apply, or hold for application, the proceeds of said Liquidation to repay:
      (a) Any Loss or expense paid, incurred, or suffered by it in connection with any Bond or Indemnity Agreement;
      (b) Any premium due from Principal with respect to any Bond: or
      (c) Sums due to Secured Party under paragraph F(1) hereof.
   (2) Any Security or proceeds of Security remaining after the sums referred to in the foregoing paragraph D(1) have been paid, and after the liability of Secured Party as referred to in paragraph C(1) has ceased, will be returned to Debtor or to any person legally authorized to receive them.
   (3) Application of Security shall not release any Indemnitor, including Debtor if Debtor be an Indemnitor, of any obligation to Secured Party which is not satisfied through application of said Security.

E. Secured Party shall not be liable for:
   (1) Depreciation, damage to, or loss of the Security unless caused by Secured Party's sole negligence;
   (2) Any performance of or failure to perform any of the acts permitted by paragraph C(3);
   (3) Any actions or inactions relating to the Security by persons not party to this Agreement;
   (4) Where applicable, investment or reinvestment of the Security; or
   (5) Where applicable, any penalties for early withdrawal or negotiation of the Security.

F. Debtor shall, upon request of Secured Party:
   (1) Repay Secured Party all reasonable sums (including attorney fees) which Secured Party may expend or incur:
      (a) In perfecting, enforcing, collecting, conserving, protecting or Liquidating any Security;
      (b) In responding to any claims by third parties that they have an interest in the Security, whether or not such claims are justified;
      (c) In transfer, registration or delivery of the Security by Secured Party or its nominee;
      (d) In enforcing the terms of this Agreement and any Exhibits hereto; or
      (e) Where applicable, by reason of Bank's failure or refusal to honor the Security.
   (2) Execute all documents and instruments necessary to carry out this Agreement.
   (3) At any time or times hereafter execute such financing statements and other instruments and perform such acts as the Secured Party may request to establish and maintain a valid and perfected Security Interest in the Security at the Debtor's expense, including costs of record searches, filing and recording.
   (4) Deposit with Secured Party additional security satisfactory to Secured Party:
      (a) To offset any depreciation in the total market value of the Security from the market value as of the date of this Agreement; or
      (b) Where applicable, whenever Bank refuses or threatens to refuse to honor the Security.

G. Substituted and Additional Security:
   (1) Secured Party may, at its sole discretion, permit Debtor to substitute other security, acceptable to Secured Party, for the Security given herein. All terms and conditions of this Agreement shall govern the substituted security.
   (2) Secured Party may, pursuant to this Agreement, or to the Indemnity Agreement, or as a requirement for further Bond(s), require or accept additional security. Acceptance of additional security shall not release the Security given herein. All terms and conditions of this Agreement shall govern the additional security.

(3) Later agreements for security executed by Debtor or any other person or entity shall not abrogate this Agreement, nor release the Security given herein. Secured Party's rights under this and later agreements shall be cumulative until the Security granted hereunder is explicitly released.

(4) If the Security herein is given in the form of cash or is at any time converted to the form of cash, held in Secured Party's Trust Account, Debtor agrees that interest earned by such cash shall be credited to and become part of the Security only from the date that Secured Party receives from Debtor all documents required by the Internal Revenue Service or any other taxing authority regarding interest on such accounts (including IRS Form W-9 and its successors). Interest earned prior to receipt by Secured Party of such documents shall be the sole property of Secured Party. Interest which is credited to the Security shall be held by Secured Party as part of the Security unless explicitly agreed in writing otherwise. All rights of Secured Party to the Security shall apply to interest credited to the Security. All taxes on interest credited to the Security shall be the sole responsibility of Debtor.

H. Termination:

(1) Debtor may terminate this Agreement as to future Bonds executed for Principal by sending written notice to Secured Party at its Home Office, 1213 Valley Street, Seattle, Washington 98109.

(2) Future Bonds are all Bonds executed after the termination date, with the exceptions noted in paragraph H(3). The termination date shall be thirty (30) days after receipt by Secured Party of the written notice of termination.

(3) Future Bonds shall not include:

(a) Bonds executed or Authorized prior to the termination date, and Modifications thereof;

(b) Bonds executed pursuant to a bid or proposal Bond which was executed or Authorized prior to the termination date, and Modifications thereof; and/or

(c) Any maintenance or guarantee Bond thereafter executed incidental to any other Bond which was executed prior to the termination date, and Modifications thereof.

(4) A Bond is "Authorized" when approved for execution by Secured Party's underwriters, or promised to Principal or any third party, where, in Secured Party's sole discretion, Secured Party shall deem itself liable or potentially liable in any way for failure to execute such Bond.

(5) The terms and conditions of this Agreement shall not be terminated by reason of the failure of Secured Party to disclose fact(s) known or learned by Secured Party about any Principal, even though such fact(s) may materially increase the risk secured herein. Debtor waives notice of such fact(s) even if Secured Party has reason to believe such fact(s) are unknown to Debtor and Secured Party has had reasonable opportunity to communicate such fact(s) to Debtor. Such fact(s) include but are not limited to fact(s) regarding claims or potential claims against Bonds or regarding Secured Party's decision to Liquidate the Collateral herein.

I. General provisions:

(1) If any term(s) or condition(s) of this Agreement shall be found to be inapplicable to or unenforceable as to the Security given or substituted hereunder, such finding shall not alter the validity of all other terms and conditions herein.

(2) Secured Party shall not be obliged to exhaust its recourse against the Principal on any Bond or any Indemnitor, but may resort to the Security hereunder, without recourse to such parties.

(3) Debtor waives any and all defenses based on the taking or release of other indemnity or security or based on disability.

(4) Secured Party's nominee shall have the same rights as Secured Party hereunder upon Secured Party's direction.

(5) Venue for any suit on this Agreement shall be in King County, Washington and this Agreement is governed by the laws of the State of Washington.

(6) No waiver by Secured Party of any right or remedy hereunder shall be deemed to waive any other right or remedy hereunder or elsewhere.

(7) This Agreement inures to the benefit of the Secured Party, its successors and assigns and shall bind the heirs, personal representatives, successors and assigns of Debtor.

(8) Debtor warrants and agrees that this Agreement and all obligations secured hereby are business and not consumer transactions and that Debtor has full power to enter into this Agreement

(9) All of Secured Party's rights and remedies, whether evidenced hereby or by any other writing shall be cumulative and may be exercised singularly or concurrently. All obligations of Debtor herein shall at once be mature and payable without notice or demand. Unless otherwise required by law, any demand upon or notice to Debtor that Secured Party may elect to give shall be effective when deposited in the mails or delivered to a courier, express, or similar delivery service addressed to Debtor at the address shown at the end of this agreement, or transmitted by telefax or other electronic communication device to a number provided by Debtor to Secured Party. Demands or notices addressed or sent to any other address or telefax number of Debtor at which Secured Party customarily communicates with Debtor shall also be effective when deposited, delivered or transmitted as described above.

(10) If at any time(s) by assignment or otherwise Secured Party transfers any obligations and Security therefor, such transfer shall carry with it Secured Party's powers and rights under this Agreement with respect to the obligations and the Security transferred and the transferee shall become vested with said powers and rights, whether or not they are specifically referred to in the transfer.

(11) Words used herein shall take the singular or plural number, and such gender, as the number and gender of parties Debtor herein shall require. Headings are for convenience only and shall not affect the meaning of the terms of this Agreement.

(12) This Agreement is intended to take effect when signed by Debtor and delivered to Secured Party.

(13) Time is of the essence of this contract, and Debtor shall be deemed to be in default of this Agreement upon occurrence of any event set forth in paragraph C(2). Interest shall accrue, before and after judgment, on all obligations secured by this Agreement at the rate of 1.5% per month from the date of Loss. If this rate exceeds the highest rate allowed by law for transactions of this type, interest shall accrue at the highest rate allowed by such law. All interest is secured hereby.

(14) This Agreement may not be changed or modified orally. No change or modification shall be effective unless specifically agreed to by Secured Party in writing.

(15) If more than one Principal is named in this Agreement, or in the Indemnity Agreement, conjunctively or disjunctively, this Agreement applies in its entirety to Bonds for any and all such Principals, singly or in combination.

(16) It is the intent of the parties to maximize the protection of Secured Party, and any ambiguities shall be construed in favor of Secured Party.

(17) Debtor waives any counterclaim or defenses against any assignee for value.

(18) All Debtors signing this Agreement are jointly and severally liable hereunder.

J. Where the Security is a Letter of Credit or other bank account, certificate, instrument, or document:

(1) "Deemed insecure" as used in paragraph C(2)(a)(6) includes but is not limited to reasonable concerns regarding the ability of Bank to honor the Security.

(2) For Letters of Credit, in the event that Bank elects not to renew or extend the Security, prior to the time set forth for Release of Security set forth in paragraph C(1) above, Secured Party may draw on part or all of the Security and deposit the proceeds in an interest-bearing Trust Account of its choice. The proceeds shall be deemed a substituted security as defined in paragraph G herein, and allocation of interest shall be as described in that paragraph.

K. Where the Security is real or miscellaneous personal property:

(c) Keeping the Security continuously insured by an insurer acceptable to Secured Party against fire, theft and other foreseeable hazards, and such other hazards as may be designated at any time by Secured Party. The insurance shall be in an amount equal to the full insurable value of the Security. At Secured Party's request, such insurance will be designated as payable to Secured Party and Debtor will deliver such policies to Secured Party with proof of payment of premium. Surety shall have all rights to insurance proceeds that are given as to the Security herein with full power to collect such proceeds. Any proceeds paid to or collected by Secured Party shall be considered substituted Security and shall be subject to the terms of paragraph G herein.

(2) Secured Party may inspect the Security at reasonable hours and for this purpose may enter the premises or enter any premises on which the Security is located.

L. Where the Security is miscellaneous personal property, Debtor further agrees that:

(1) Unless Secured Party agrees in writing, Debtor shall not remove (or allow anyone else to remove) the Security from the State designated herein as its primary location.

(2) Debtor warrants that Debtor owns the Security free and clear of all security interests and encumbrances whatsoever. Debtor will not create or permit the existence of any lien or security interest on the Security other than that created herein.

(3) Debtor shall not sell or lease the Security or any interest therein without prior written approval of Secured Party.

(4) Any Certificate of Title now or hereafter existing on the Security will be delivered to Secured Party as legal owner for any motor vehicle and appropriately as secured party or legal owner of any other Security.

(5) Upon default, the debtor shall make the above-described miscellaneous personal property available to Secured Party, and shall assist Secured Party in taking possession of the same.

M. Where the Security is real property, Secured Party and Debtor agree that any warranty of Debtor's sole ownership contained in Exhibit A is subject to only those exceptions presented to Secured Party in writing and accepted by the Secured Party in writing prior to the date of this Agreement.

N. Special Limitations and Conditions (None, if none listed)

For good and sufficient consideration, Debtor agrees to the above provisions and authorizes Secured Party to do any and all of the acts set forth in such provisions when it deems such action to be appropriate.

DEBTOR WARRANTS THAT DEBTOR HAS READ THE ABOVE PROVISIONS AND UNDERSTANDS THAT THEY ARE LEGALLY BINDING ON DEBTOR.

Signature of Debtor:

Company Name (if applicable)

_____

By: _____

Title: _____

Employer ID No.: _____

Address: _____

_____

_____

Phone No.: _____

FAX No.: _____

Individual (if applicable)

Signed [signature]

Print Name: MARK DECOURSEY

Social Security No. 113-40-0888

Signed [signature]

Print Name: CAROL DECOURSEY

Social Security No. 557-67-2742

Address: ~~8209 172ND AVE NE REDMOND WA 98052~~

_____

_____

Phone No.: 425-591-5197

FAX No.: 206 452-5885

Contractors Bonding and Insurance Company hereby acknowledges receipt of this Agreement and the Security described herein.

Dated: 6/22/12

Contractors Bonding and Insurance Company

By: [signature] TERRY L. ROBINSON

Title: _____

AgrCOLR.04-US031491
ASIST/NA/COLRECAG/1/061098

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF KING

LANE POWELL, PC, an Oregon professional corporation,

Plaintiff,

v.

MARK DECOURSEY and CAROL DECOURSEY

Defendants

No. 11-2-34596-3 SEA

SUPERSEDEAS BOND AMENDED

WHEREAS the Superior Court of Washington in King County on December 21, 2011 ordered that Mark and Carol DeCoursey deposit $57,036.30 in prejudgment interest to the registry of the Court in anticipation of Lane Powell prevailing in the instant case;

WHEREAS the Superior Court denied a reconsideration of this order on May 2, 2012;

WHEREAS the Superior Court denied the same reconsideration a second time on June 4, 2012;

WHEREAS DeCourseys seek discretionary review of these orders;

WHEREAS the Court of Appeals, Div. I, has requested that DeCourseys file a Supersedeas bond for the amount at issue as a condition for staying enforcement of the

Mark & Carol DeCoursey, *pro se*
8209 172nd Ave NE
Redmond, WA 98052
Telephone 425.885.3130

orders and associated actions in the Superior Court;

NOW, THEREFORE, DeCourseys have obtained the attached bond, and do now file it with the Court.

DATED this 26 day of June, 2012

Carol DeCoursey

Pro se

Mark DeCoursey

Pro se

Mark & Carol DeCoursey, *pro se*
8209 172nd Ave NE
Redmond, WA 98052
Telephone 425.885.3130

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF KING

LANE POWELL, PC, an Oregon professional corporation,

Plaintiff,

v.

MARK DECOURSEY and CAROL DECOURSEY

Defendants

No. 11-2-34596-3 SEA

DECLARATION OF SERVICE

I, Carol DeCoursey, declare under penalty of perjury under the laws of the State of Washington that on the 26 of June, 2012, I caused DeCourseys' *Supersedeas Bond Amended* to be emailed to the following persons:

Lane Powell, PC, in the person of its counsel,
McNaul Ebel Nawrot & Helgren PLLC
"Malaika Eaton" <MEaton@mcnaul.com>, "Robert Sulkin" <rsulkin@mcnaul.com>,
"Robin Lindsey" <RLindsey@mcnaul.com>,
One Union Square
600 University Street, Suite 2700
Seattle, Washington 98101-3143

26 June 2012 Carol DeCoursey
Date Carol DeCoursey

Mark & Carol DeCoursey, *pro se*
8209 172nd Ave NE
Redmond, WA 98052
Telephone 425.885.3130

Thank you. Your document(s) has been received by the Clerk.

Click here to submit your Working Copies electronically

Click here to submit documents to Ex Parte via the Clerk

Click here to E-Serve the documents you just e-filed

Confirmation Receipt

Case Number:	11-2-34596-3	**Case Designation:**	SEA
Case Title:	LANE POWELL PC VS DECOURSEY ET ANO		
Filed By:	Mark DeCoursey	**Submitted Date/Time:**	6/26/2012 9:08:13 PM
		Received Date/Time:	6/27/2012 9:00:00 AM
User ID:	mhdecoursey	**WSBA #:**	

Document Type	File Name	Attachment(s)	Cost
OTHER (DO NOT FILE UNSIGNED ORDERS) RE SUPERSEDEAS BOND	2012-06-26-filing-amended.pdf	2012-06-26-bond.pdf	0.00
AFFIDAVIT OF MAILING	2012-06-26-service-amended.pdf		0.00

Print

Hon. Richard D. Eadie
Plaintiff's Third Motion for Contempt
Noted for Consideration: July 6, 2012
WITHOUT ORAL ARGUMENT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LANE POWELL PC, an Oregon professional corporation, Plaintiff, v. MARK DeCOURSEY and CAROL DeCOURSEY, individually and the marital community composed thereof, Defendants.	No. 11-2-34596-3SEA ORDER ON PLAINTIFF'S THIRD MOTION FOR ORDER OF CONTEMPT OR RULE 37 SANCTIONS **PROPOSED**

THIS MATTER comes before the Court on Plaintiff Lane Powell's Third Motion for Order of Contempt or Rule 37 Sanctions. In connection with that Motion, the Court reviewed the following:

(1) Plaintiff's Third Motion for Order of Contempt or Rule 37 Sanctions;

(2) Declaration Malaika M. Eaton in Support of Plaintiff's Third Motion for Order of Contempt or Rule 37 Sanctions and Exhibits A–N attached thereto;

(3) The DeCourseys' Response to Plaintiff's Third Motion for Order of Contempt or Rule 37 Sanctions and support documents, if any;

(4) Plaintiff's Reply in Support of Plaintiff's Third Motion for Order of Contempt or Rule 37 Sanctions, if any.

The Court has also reviewed the records and files herein.

II. FINDINGS OF FACT

Being duly informed, the Court hereby makes the following FINDINGS OF FACT:

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A. Discovery Orders

1. On October 5, 2011, Lane Powell propounded its First Set of Interrogatories and Requests for Production to Defendants, which sought information on the relationship between Lane Powell and the DeCourseys in the underlying lawsuit in which Lane Powell represented the DeCourseys ("the Windermere Lawsuit"). The Windermere Lawsuit is the subject of the DeCourseys' counterclaims against Lane Powell for, among other things, malpractice. Lane Powell noted the depositions of the DeCourseys based on the anticipated response time.

2. The DeCourseys' eventual responses were incomplete, claiming (1) attorney-client privilege over documents relating to Lane Powell's representation; and (2) that they should not be required to produce materials they believed Lane Powell had.

3. Because of the inadequate responses, Lane Powell postponed the DeCourseys' depositions.

4. On November 3, 2011, the DeCourseys filed a Motion for Discovery Protection Under CR 26(c) and Sanctions Under 26(i) and Subjoined Declaration, Dkt. 11, which sought an order that their communications with Lane Powell on the Windermere lawsuit were privileged.

5. Lane Powell responded that this objection was baseless because they waived privilege by asserting far-reaching malpractice and related counterclaims against Lane Powell. Dkt. 18 at 6–7.

6. On November 17, 2011, the Court denied the DeCourseys' motion in its Order on Defendants' Motion for Discovery Protection Pursuant to CR 26(c) and Sanctions Under CR 26(i). Dkt. 23. This order rejected the DeCourseys' objections to Lane Powell's discovery requests, including the DeCourseys' privilege objection.

7. The DeCourseys raised the same privileged arguments again on reconsideration, Dkt. 26; the Court again rejected the DeCourseys' privilege arguments, Dkt. 64.

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8. The DeCourseys moved for a discovery plan again claiming privilege and that they should not have to produce documents they claimed Lane Powell had. Dkts. 16 & 24.

9. Lane Powell again opposed on the same grounds. Dkt. 40.

10. On December 12, 2011, this Court denied the DeCourseys' requests in its Order on Defendants' Amended Motion for CR 26(f) and Discovery Plan, Dkt. 44, again rejecting their position on privilege and other objections.

11. Despite these orders, the DeCourseys still withheld discovery based on the same objections the Court had previously rejected.

12. On January 24, 2012, because of the DeCourseys' refusal to comply with the Court's previous orders and their discovery objections, Lane Powell filed a Motion to Compel Defendants' Discovery Responses to First Discovery Requests, asserting that the DeCourseys' continued assertions of the same discovery objections were improper. Dkt. 71.

13. The DeCourseys' response largely repeated previously-rejected arguments. Dkt. 90.

14. On February 3, 2012, the Court granted Lane Powell's motion, directing the DeCourseys to "provide full and complete responses to Plaintiff's First Set of Interrogatories and Requests for Production" **no later than February 13, 2012**. Dkt. 93.

15. The DeCourseys' sought reconsideration. Dkt. 97. They made no effort to comply with the Court's orders and did not seek a stay.

16. On February 29, 2012, the Court entered its Order on Motion for Reconsideration of Motion to Compel, which disposed of the DeCourseys' motion without requesting a response from Lane Powell. Dkt. 98 . That Order required the DeCourseys to "respond to discovery requests *in full* with evidence and materials in accordance with this Court's order of February 3, 2012 in accordance with CR 26(b) and ER 502." *Id.* at 2 (emphasis added). The Court specifically struck the DeCourseys' proposed language on the attorney-client privilege. *Id.*

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17. Despite the fact that the Discovery Orders consistently rejected the DeCourseys' privilege arguments, they continued to obstruct discovery. They even argued that the Court's rejection of their reconsideration motion actually granted them the relief they requested and precluded discovery of "privileged" documents. Dkt. 102, **Ex. D**. They persisted even after Lane Powell pointed out that the order's language did not support their position and that court rules would preclude the Court from granting relief on reconsideration without calling for a response. *Id.* The DeCourseys' arguments in this regard are unreasonable and frivolous.

18. Due to the DeCourseys' recalcitrance, Lane Powell's efforts to litigate this case on the merits have been stymied.

19. The DeCourseys were aware of each of the Court's discovery orders, including the February 3, 2012 Order, within the time to comply and never presented evidence of inability to comply.

20. To date, the DeCourseys have not provided full and complete answers to Plaintiff's First Set of Discovery Requests as ordered.

B. Registry Order

21. On December 21, 2011, the Court granted Plaintiff's Motion to Require Deposit of Funds Into Court Registry, ordering the DeCourseys to deposit $57,036.30 into the Court Registry **no later than December 31, 2011**. Dkt. 63. This motion was necessitated by the DeCourseys' deliberate decision not to notify Lane Powell of their attempt to undermine Lane Powell's lien.

22. The DeCourseys were aware of the Registry Order within the time to comply and never presented evidence of inability to comply.

23. The DeCourseys' sought reconsideration. Dkt. 67. They made no effort to comply with the Registry Order and did not seek a stay.

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24. To date, the DeCourseys have not deposited the $57,036.30 into the Court Registry as ordered.

C. Contempt Order

25. On January 26, 2012, Lane Powell moved for contempt for the failure to comply with the Registry Order. Dkt. 77. Lane Powell's motion was straightforward: the Registry Order's required the DeCourseys to deposit funds into the Court Registry, they failed to comply, and they never claimed they were unable to do so. *Id.* The DeCourseys opposed. Dkt. 84.

26. On March 8, 2012, Lane Powell filed a second motion, this time for both contempt and discovery sanctions for the DeCourseys' refusal to comply with the Court's discovery orders. Dkt. 101. The DeCourseys opposed using the same arguments that this Court had previously rejected on numerous occasions and, this time, also took the position that the Court's order on reconsideration had actually granted them the relief they sought. Dkt. 103.

27. On April 25, 2012, the Court granted Lane Powell's motions for contempt and sanctions based on the DeCourseys' failure to comply with the Registry and Discovery Orders. In the Contempt Order, the Court found their continued refusal to comply to be "***without reasonable cause or justification*** and therefore [] ***willful and deliberate***." Dkt. 106A (emphasis added). It found their conduct "has prejudiced Plaintiff's preparation of this case." *Id.* It ordered them to comply with the Registry and Discovery Orders by depositing $57,036.30 into the Court Registry and fully responding to discovery **no later than 4:00 pm on May 3, 2012**. *Id.* It further ordered monetary sanctions in the amount of Lane Powell's fees and costs in securing compliance. It also cautioned them that "further and more serious sanctions, including the possibility of striking claims, defenses, or pleadings, or entry of default may follow from any further failure to abide by court orders or rules." *Id.*

28. The DeCourseys refused to comply with the Contempt Order, and then

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belatedly sought a stay from this Court, Dkt. 110 , and from the Court of Appeals. Both motions for stay were denied.

29. On June 26, 2012, the DeCourseys returned to the Court of Appeals asking again for a stay. Although not the DeCourseys do not call it that, their motion to the Court of Appeals seeks reconsideration of the previously denied stay request. In connection with their effort to convince the Court of Appeals to reconsider the denial of their stay motion, the DeCourseys posted a supersedeas bond in the amount of $57,036.30—the amount they were required to deposit into the Court Registry months ago—and notified the Court of the same. **Ex. N.**

30. The DeCourseys were aware of the Contempt Order within the time to comply and never presented evidence of inability to comply.

31. To date, the DeCourseys have not complied with the Contempt Order serving on counsel full and complete answers to Plaintiff's First Set of Discovery Requests. They also have not complied by depositing the sum of $57,036.30 into the Court Registry or seeking approval from this Court to post a bond in lieu of compliance.

D. Intent to Comply

32. On June 6, 2012, and after the Court denied the DeCourseys' motion for stay, Lane Powell's counsel asked the DeCourseys whether they intended to comply with the Court's orders. The DeCourseys did not respond.

33. Lane Powell's counsel again inquired as to the DeCourseys' intentions. The DeCourseys again did not respond.

34. Lane Powell again moved for contempt.

III. CONCLUSIONS OF LAW

Being duly informed, the Court hereby reaches the following CONCLUSIONS OF LAW:

1. The DeCourseys have failed to obey the Registry Order and Contempt Order

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by refusing to deposit $57,036.30 into the Court Registry, despite the fact that they were able to do so. As such, the Court has statutory and inherent authority pursuant to RCW 7.21.010 to hold the DeCourseys in contempt of Court and impose remedial sanctions.

2. The DeCourseys have failed to obey numerous Discovery Orders and the Contempt Order by refusing to provide full and complete answers to Plaintiff's First Set of Discovery Requests based on objections that this Court has rejected on numerous occasions. As such, the Court has considerable authority under CR 37(b)(2) to sanction the DeCourseys.

3. The Court finds the DeCourseys' refusal to comply with this Court's Contempt Order has been without reasonable cause or justification and therefore is willful and deliberate. The Court likewise adopts by reference its earlier findings the from the Contempt Order.

4. The prejudice Lane Powell has suffered and continues to suffer as a result of the DeCourseys' willful and deliberate refusal to comply with the Court's Discovery Orders and the discovery aspects of the Contempt Order is substantial insofar as it needlessly compromises Lane Powell's ability to prepare for trial. Lane Powell has been unable to move this case forward since just after the case was filed.

5. No sanction against the DeCourseys other than striking their counterclaims and defenses would adequately punish the DeCourseys, deter them from further noncompliance, and ensure that they do not profit from their wrongdoing. Merely holding the DeCourseys in contempt (again) and imposing monetary sanctions would do little more than compensate Lane Powell for the costs associated with litigating the contempt proceedings, without doing anything to alleviate the substantial prejudice to Lane Powell and its ability to pursue its claims against the DeCourseys and defend against their counterclaims. Indeed, the DeCourseys' pattern of defiance makes clear that lesser sanctions will not suffice.

6. Having considered lesser alternatives, the Court finds that such alternatives are not warranted under the circumstances and rejects them. Considering the DeCourseys'

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extended pattern of willful defiance of this Court's orders, and the fact that this Court specifically warned the DeCourseys that these sanctions would result from continued non-compliance, the sanctions imposed are the only appropriate sanctions here.

IV. ORDER

In light of the foregoing findings of fact and conclusions of law, the Court exercises its substantial discretion and hereby ORDERS as follows:

1. Plaintiff's Third Motion for Order of Contempt or Rule 37 Sanctions is hereby **GRANTED** in full.

2. Defendants' counterclaims and defenses are **STRICKEN**.

3. Lane Powell is **AWARDED** reasonable attorney fees and expenses pursuant to RCW 7.21.030(3) and CR 37(b)(2) incurred in bringing its Third Motion for Order of Contempt or Rule 37 Sanctions. Plaintiff may note a motion pursuant to CR 37(b)(2) for those fees and expenses.

IT IS SO ORDERED.

DATED this ____ day of June, 2012.

_____
Honorable Richard D. Eadie
King County Superior Court Judge

Presented by:

McNAUL EBEL NAWROT & HELGREN PLLC

By: _____
Robert M. Sulkin, WSBA No. 15425
Malaika M. Eaton, WSBA No. 32837

Attorneys for Plaintiff Lane Powell, PC

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