

Is It OK for Lawyers to Lie in Court -- If the Judge Lets Them?

Note: \$770,986.32 was accurate when this was written (6/20/2014). The amount ultimately awarded to Lane Powell was \$842,734.67.

Lawyers Hijack Whistleblowers' Case Against Windermere Real Estate and:

- Fail to reveal conflict of interest
 - Exploit case for fees
 - Sue clients to force payment
 - Threaten to pauperize clients
 - Threaten to expose privileged confidences
 - Lie in court, claim \$770,986.32 -- and WIN!
- (Surprise! Judge is married to Windermere broker!)



Former Mayor of Bellevue, Atty. Grant Degginger, did not disclose REALTORS' campaign contribution when accepting our Consumer Protection Act lawsuit against Windermere. In 2012, he was appointed to the Public Disclosure Commission.



Atty. Malaika Eaton, representing Lane Powell, submitted patently false material statements to the court. Perjury laws should be enhanced to ensure that fines and imprisonment are meted out to all such attorneys. No one should lie before the court.



Robert Sulkin, Eaton's manager and SLAPP suit attorney, seeks to silence those who speak out on public policy and has tried to squelch the BDS movement. Sulkin also made patently false material statements on behalf of Lane Powell.

We make no personal criticisms of these lawyers -- we merely take exception to their conduct as officers of the court. Visit <http://www.everyones-business.org>, examine more than 4,000 pages of original documents and consider some legislative proposals to restore the integrity of the judicial process.

The Writers. We are two whistleblowers and homeowners who live in Redmond, Washington. We are senior citizens, a married couple of moderate income. On October 5, 2011 we were sued by our former law firm, Lane Powell. Here is a synopsis of our story:

We Give Lane Powell Well Developed CPA Case. In 2007, after representing ourselves for 18 months in a Consumer Protection Act (CPA) lawsuit against the state's largest real estate company (Windermere), a construction company, and a number of others (Case No. 06-2-24906-2 SEA), we needed a lawyer to take us to trial. A young lawyer was recommended to us as honest, bright, and aggressive. He had just won a trial against one of our opponents. We met him, we liked him a lot, and we asked him to represent us. He had *just* been hired by Lane Powell, a 200-lawyer international law firm.

Conflict of Interest? But we did not know who would be supervising our new lawyer at Lane Powell: It was to be Grant Degginger, Republican political hopeful and Mayor of Bellevue. Nor did we know that Mayor Degginger was concurrently presiding over the biggest real estate/construction boom in Bellevue's history -- that he had a relationship with the very forces we were opposing in our CPA suit. *In fact, we have discovered that in June, 2007, just three months before Degginger's firm agreed to take our case, the Washington Association of Realtors ("REALTORS") gave the single largest contribution to Degginger's 2007 election campaign. This is significant because Windermere required its agents and brokers to be members of REALTORS: Therefore, a large part of REALTOR'S contribution to Degginger came from Windermere agents. Degginger did not reveal any of this when Lane Powell accepted our case.* Ironically, in 2012, he was appointed to the Public Disclosure Commission ...

We Blow the Whistle: Regulators Allow Windermere to Prey on the Public. We discovered early in our case that Windermere had a history of preying on the Washington public. We found that the Department of Licensing (DOL) and the Attorney General's office (AGO) were permitting Windermere to transgress real estate and consumer protection laws. Unprotected by government regulators, wronged customers were forced to sue to recoup their losses. But there again Windermere won by using scorched earth litigation tactics, spiraling legal expenses of the wronged consumers into the stratosphere. Many victims were forced to settle for a pittance and sign onerous non-disclosure agreements, which shielded Windermere's anti-competitive practices from public view and guaranteed the company's first place in real estate sales. We became vocal critics of this public corruption and favoritism, and hosted <http://www.Windermere-Victims.com> and <http://www.RenovationTrap.com>. We testified before the Legislature. Yet Lane Powell refused to tell the courts about the negation of consumer protection law, even though that information was intrinsic to our case. The information that should have been given to the court, of course, might well have exposed key players in Grant Degginger's support network.

Devastating Cost of "Victory." Lane Powell refused to take action under CR 11 to halt Windermere's ruinously aggressive litigation tactics (a total of 463 items on case docket), at the same time milking our case for legal fees: Twenty-seven (27) timekeepers were assigned to the case; lawyers and highly paid paralegals billed their usual

rates for photocopying 110,367 pages, at a cost of \$42,000 to us -- and billed \$16,833 for use of the machines. Lane Powell failed to ask the court for awards that were due us and failed to tax Windermere for costs and fees that Lane Powell billed to us. Lane Powell secretly agreed with Windermere to reduce the court-ordered 12% post-judgment interest rate to 3.49%. The lower rate meant a loss of more than \$260,000 for us, and a savings to Windermere of same. At the same time Lane Powell demanded we pay 9% interest on amounts invoiced. Despite specific contractual obligations, Lane Powell failed, then refused, to protect various aspects of our awards on appeal, refused to accept our directions regarding a Supreme Court petition, and while doing so, *in email*, downright lied to us about the function and powers of the Supreme Court. *Twice, at critical junctures, Lane Powell advised us to capitulate to Windermere.* We now believe that Lane Powell violated many of the Rules of Professional Conduct, including RPC 1.8(h)(1) when it wrote and had us sign its fee agreement. Early in its representation, Lane Powell acquired a proprietary interest in our suit, in violation of RPC 1.8(i). In brief: During the four years that it represented us (2007 to 2011), we believe Lane Powell committed acts and omissions that disadvantaged us and advantaged the interests of Windermere, Lane Powell's shareholders, and Grant Degginger's political network.

Development of Second Lawsuit. In order to prevent Lane Powell doing further damage to our case, on August 3, 2011, we terminated its representation. We had already paid Lane Powell approximately \$313,808; on the same day it was terminated, Lane Powell filed a lien for \$384,881.66 against the upcoming judgment. We hired a fees-dispute/malpractice attorney to negotiate a settlement; on September 22, 2011, Paul Fogarty sent a 19-page issue analysis to Lane Powell. But on October 5, 2011, even before the Windermere suit had gone to final judgment, Lane Powell filed suit against us. (Case No. 11-2-34596-3SEA) Lane Powell was represented by Robert Sulkin and Malaika Eaton of McNaul Ebel Nawrot & Helgren.

Assigned Judge Is Husband of Windermere Broker. While the Windermere lawsuit was still in the Seattle courthouse, Lane Powell's lawsuit was assigned to Judge Richard D. Eadie, one of 32 available for the assignment. From the beginning, Judge Eadie knew of our political activism against the corruption that secures Windermere's position in the marketplace. In August, 2012, we learned he is married to a Windermere broker. Over the last nine years, the judge's family has enjoyed at least \$289,000 in income from Windermere; Judge Eadie is also a beneficiary of the Windermere Retirement Plan. We asked Judge Eadie to recuse himself. Lane Powell opposed us and the judge has refused to recuse himself. (The matter is currently under appeal.)

Strategic Litigation Against Public Participation ("SLAPP") Suit. Lane Powell demanded the names of everyone who knew about the Windermere suit and a summary of what they knew. Our story had been put before the Legislature and covered by local and national media (featured on MSNBC's *Undercover* series); the demands were impossible to fulfill, and obviously designed to harass us, overwhelm us, and map our political contacts. Such demands could only intimidate our exercise of First Amendment rights and participation in the political process, and dissuade us from continuing. See RCW 4.24.525.

Extortion Under Color of Law: Threat to Reveal Attorney-Client Confidences. On the same day it filed suit, Lane Powell served discovery requests, demanding that ALL our attorney-client privileged information on ALL subjects be placed into evidence -- not just those relevant to the issues in the suit. In our opinion, those attorneys made discovery demands of confidential and irrelevant material in violation of Civil Rule 26(b), ER 502, and *Pappas v. Holloway* case law. To us, the message was simple: "Pay up, or we'll see that all your confidences are exposed."

Extortion Under Color of Law: Threat of Financial Ruin. The day after it filed suit, Lane Powell's attorney, Robert Sulkin, phoned Atty. Paul Fogarty to say that Lane Powell would spend "\$800,000" in legal fees to recover "\$300,000." That is, Lane Powell threatened to consume the Windermere lawsuit award in scorched earth litigation if we did not submit to its fee demands. We could not afford to match the \$800,000 fee threat, so we represented ourselves. Lane Powell thus effectively denied us legal representation. We, two Windermere whistleblowers, without benefit of counsel, had to directly face a judge who was married to a Windermere broker.

In brief: We believe Lane Powell's threats to force our confidences into evidence and to wage ruinous litigation warfare against us -- unless we "pay up"-- constitute blackmail and extortion, albeit under color of law.

Repeated Lying to the Court. These attorneys repeatedly told knowing, material, and patent lies in court; despite proof, Judge Eadie accepted and forwarded many of those lies in his rulings. (See "The Truth, the Lie, and the Judge," <http://www.everyones-business.org/liesmatrix>. Earlier edition filed with Judge Eadie's court on 4/10/13, Dkt. 392). Judge Eadie repeatedly ruled against us, and ultimately awarded Lane Powell \$770,986.32.

Denial of Due Process. We believe Lane Powell and its attorneys, using their positions as officers of the court, deliberately and effectively denied us due process, as guaranteed by the 14th Amendment of the US Constitution.

We don't know why law is practiced and justice is administered like this in the U.S., but we will do our best to see the anomalies are corrected. The courts are everyone's business: They were designed to distribute justice to all in society, not just to fatten the 1%.

Above is a synopsis of: "Is It OK for Lawyers to Lie in Court -- If the Judge Lets Them?" by Carol & Mark DeCoursey, June, 2014. Full text at <http://Everyones-Business.org>. <mhdecoursey@gmail.com> (Update, 4/11/15: LP ultimately awarded \$842,734.67.)

Photo credits: King County Democrats, Issue #174; McNaul Ebel Nawrot & Helgren, PLLC web page.