

Hon. Richard D. Eadie
**Plaintiff's Motion to Require
Deposit of Funds Into Court Registry
Noted for Consideration: Wednesday, December 21, 2011
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 MOTION TO
REQUIRE DEPOSIT OF FUNDS
INTO COURT REGISTRY

I. INTRODUCTION

Defendants Mark and Carol DeCoursey ("Defendants") contrived to circumvent Lane Powell's attorneys lien on the proceeds of the underlying case in which Lane Powell represented Defendants: *V&E Medical Imaging Services, Inc. v. Mark DeCoursey, et ux., et al* (the "Windermere lawsuit"). Despite the fact that they were aware that Lane Powell's attorneys lien included continuously accruing interest consistent with Defendants' agreement with Lane Powell, Defendants misrepresented the amount of Lane Powell's attorneys lien to the court commissioner in the Windermere lawsuit. Relying on that misrepresentation, the court commissioner permitted the judgment debtors to satisfy the judgment in the Windermere lawsuit by paying an amount less than the full amount of Lane Powell's lien into the registry of the court and turning over the balance, well over \$800,000, directly to Defendants.

1 Even more egregious, despite the fact that this lawsuit for foreclosure of that lien
2 was pending, Defendants provided no notice whatsoever to Lane Powell before depriving
3 it of its lien rights in the judgment proceeds. Defendants also *specifically requested that*
4 *counsel for the judgment debtor likewise keep Lane Powell in the dark* and failed to
5 inform her that this lawsuit was pending.

6 As a result of Defendants' lack of candor, Lane Powell's attorneys lien has been
7 compromised. Defendants have received more than they would have been entitled to
8 receive had they told the court commission the whole truth (or provided notice and an
9 opportunity to be heard to Lane Powell so that it could provide the court commissioner
10 with all the facts). Accordingly, Lane Powell respectfully requests that this Court order
11 Defendants to supplement the amount held in the registry of the court to include interest
12 accruing through the anticipated end of trial in this matter.

13 II. STATEMENT OF FACTS

14 A. Lane Powell Successfully Represents Defendants in the Underlying Case

15 Lane Powell agreed to represent the Defendants in connection the Windermere
16 lawsuit. Defendants, in turn, agreed to pay Lane Powell for its representation.

17 Lane Powell achieved an excellent result for the Defendants in the Windermere
18 lawsuit. The court entered a judgment for damages in the amount of \$522,200.00 (on
19 claims relating to a house that, according to the Defendants' own allegations, only cost
20 them \$280,000, Dkt. 21 ¶ 54A), and granted an award of Lane Powell's legal fees in the
21 amount of \$463,427.00 and taxable costs of \$45,000.00 (even though not all the claims
22 were covered by a fee shifting statute). Lane Powell likewise successfully defended the
23 judgment on appeal before both the Washington Court of Appeals and the Washington
24 Supreme Court. Again, Lane Powell obtained fee awards from each of these courts.

25 Lane Powell attempted to work with the Defendants to pay Lane Powell's fees as
26 they had agreed to do. Indeed, Lane Powell was willing to forbear for a reasonable time

1 in collecting the fees provided that Lane Powell was paid first out of any settlement
2 proceeds or any payment of the judgment.

3 **B. Defendants Refuse to Honor Their Obligations to Pay Lane Powell for its**
4 **Work and Sue Lane Powell for Malpractice**

5 Despite all the work performed by Lane Powell for the Defendants, Defendants
6 have not honored their obligations to pay Lane Powell. Indeed, after learning that
7 Windermere had expressed an interest in paying the judgment once the Supreme Court
8 denied Windermere's petition for review, Defendants terminated Lane Powell's
9 representation in order to prevent Lane Powell from recovering fees and costs to which it
10 was entitled.

11 As a result, Lane Powell was forced to protect its interests. On August 3, 2011,
12 Lane Powell filed an attorneys' lien. **Ex. A.**¹ The lien was filed with the court in the
13 Windermere lawsuit and served on counsel for the Windermere parties (the Reed McClure
14 law firm) and counsel for Defendants (Allied Law Group). The lien claimed "not less
15 than \$384,881.66" and also claimed interest on that amount that was continuing to accrue.

16 *Id.* In this regard, Lane Powell's lien stated:

17 NOTICE IS HEREBY GIVEN that the undersigned attorneys, Lane Powell
18 PC, claim a lien pursuant to RCW 60.40.010, for services rendered to
19 Defendants and Third-Party Plaintiffs Mark and Carol DeCoursey and
20 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
21 trial and appellate courts.

22 *Id.* Defendants were aware that Lane Powell's lien included continuously accruing
23 interest. **Ex. B** at 1 ("Lane Powell filed an attorney's lien on the judgment for an
24 additional \$384,881.66 (for which Lane Powell is now claiming continuously accruing
25 interest).").

26 ¹ Exhibits A–G referenced herein are attached to the Declaration of Malaika M. Eaton in
Support of Plaintiff's Motion to Require Deposit of Funds Into Court Registry ("Eaton Decl.")
filed herewith.

1 When payment was not forthcoming, Lane Powell filed a complaint against
2 Defendants a little more than two months later, in early October. Dkt. 1. Lane Powell
3 served the Defendants with the lawsuit on October 5, 2011. Dkts. 5–6.

4 In response, Defendants counterclaimed for legal malpractice, breach of fiduciary
5 duty, breach of contract, “Undisclosed Conflict of Interest,” violations of the Consumer
6 Protection Act, malicious prosecution, unjust enrichment, and extortion. Dkt. 21.

7 **C. Without Notice to Lane Powell, Defendants Arrange for Payment of the**
8 **Windermere Judgment That Fails to Adequately Provide for Lane Powell’s**
9 **Lien**

10 Unbeknownst to Lane Powell, Defendants were working with the Windermere
11 judgment debtors to obtain payment of the judgment. Defendants (represented in that case
12 by Michele Earl-Hubbard of Allied Law Group) and the judgment debtors (represented by
13 Pamela Okano of Reed McClure) filed a Stipulated Motion for Leave to Deposit Portion
14 of Judgment Payment Into Court Registry (“Lien Motion”) on November 2, 2011. **Ex. C.**
15 The Lien Motion was filed at the suggestion of Defendants’ counsel, Ms. Earl-Hubbard.
Id. at 2.

16 The Lien Motion sought an order from the court commissioner for the judgment
17 debtor to pay \$384,881.66 into the registry of the court. *Id.* at 1. According to the Lien
18 Motion, the amount requested (\$384,881.66) “equals the amount of the attorney fee lien
19 filed by the former attorneys of third-party plaintiffs/judgment creditors DeCoursey.” *Id.*
20 The Lien Motion also informed the commissioner that “[t]he amount of the lien is
21 \$384,881.66.” *Id.* at 2. The Lien Motion stated:

22 Judgment debtors seek to have the judgment against them satisfied.
23 Judgment creditors are amenable to this, but the parties realize that
24 judgment creditors’ former attorneys have given notice of an attorney lien
25 that places a portion of the payment of the judgment in dispute. Under
26 these circumstances, this court should order the disputed funds—
\$384,881.66—deposited into the registry of the court. In this way, the
judgment against judgment debtors can be satisfied and the disputed funds
are protected pending resolution of the fee dispute between the judgment
creditors and their former attorneys.

1 Ex. C at 5. Notably, the Lien Motion *did not attach* a copy of Lane Powell's actual lien.
2 *Id.*; Ex. D.

3 Despite the clear language Lane Powell's lien—and Defendants' knowledge—the
4 Lien Motion failed to inform the court commissioner that Lane Powell's lien actually
5 included interest that was continuously accruing on the amounts Defendants' owed Lane
6 Powell. Ex. C. Defendants were certainly aware that Lane Powell's lien included
7 accruing interest as well as the principal amount of \$384,881.66. Ex. B at 1 ("Lane
8 Powell filed an attorney's lien on the judgment for an additional \$384,881.66 (for which
9 Lane Powell is now claiming continuously accruing interest)."). Indeed, Lane Powell's
10 complaint—served on Defendants on October 5, 2011, well before the Lien Motion—
11 stated that "on August 3, 2011, Lane Powell served and filed an attorneys' lien in
12 accordance with RCW 60.40.010 and applicable law for the value of services rendered
13 and costs advanced on behalf of the DeCourseys in an amount *not less than \$384,881.66*
14 *plus interest after August 3, 2011.*" Dkt. 1 ¶ 3.8 (emphasis added). Yet, in connection
15 with the Lien Motion, Defendants informed the court commissioner that Lane Powell's
16 lien was limited to \$384,881.66. Ex. C at 1–2.

17 Significant for the Court's purposes here, neither the Defendants nor the judgment
18 debtor provided Lane Powell with any notice of the Lien Motion or of the relief that they
19 were seeking from the Court. Eaton Decl. ¶ 2. Ms. Okano, counsel for the judgment
20 debtors, spoke with Defendants' counsel about providing notice to Lane Powell of the
21 Lien Motion but *Defendants' counsel specifically requested that Lane Powell not be*
22 *provided with any notice whatsoever.* Okano Decl. ¶¶ 3–4. Ms. Okano was not aware of
23 the fact that there was a lawsuit pending between Lane Powell and the Defendants to
24 enforce the lien and Ms. Earl-Hubbard, acting on behalf of Defendants, failed to inform
25 Ms. Okano of the existence of the lawsuit. *Id.* ¶ 5.
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IV. AUTHORITY

A. Defendants' Actions Have Impaired Lane Powell's Legitimate Lien Interests

Under RCW 60.40.010(1), Lane Powell had an attorneys' lien on the proceeds of the Windermere lawsuit judgment. That statute provides, in relevant part:

An attorney has a lien for his or her compensation, whether specially agreed upon or implied, as hereinafter provided:

...

(c) Upon money in the hands of the adverse party in an action or proceeding, in which the attorney was employed, from the time of giving notice of the lien to that party;

(d) Upon an action, including one pursued by arbitration or mediation, and its proceeds after the commencement thereof to the extent of the value of any services performed by the attorney in the action, or if the services were rendered under a special agreement, for the sum due under such agreement; and

(e) Upon a judgment to the extent of the value of any services performed by the attorney in the action, or if the services were rendered under a special agreement for the sum due under such agreement, from the time of filing notice of such lien or claim with the clerk of the court in which such judgment is entered, which notice must be filed with the papers in the action in which such judgment was rendered, and an entry made in the execution docket, showing name of claimant, amount claimed and date of filing notice.

RCW 60.40.010(1)(c)–(e). Notably, the statute provides that liens, such as Lane Powell's, over an action and its proceeds or over a judgment are "*superior to all other liens.*" RCW 60.40.010(3) (emphasis added).³

³ Moreover, Lane Powell's lien is not defeated by the fact that money subject to the lien has been paid over (mistakenly) to Defendants. Lane Powell's attorneys' lien qualifies as a lien upon the Windermere lawsuit and its proceeds under RCW 60.40.010(d). As the lien statute indicates, the term "proceeds" as used in subsection (d) "means any monetary sum received in the action." RCW 60.40.010(5). Moreover, "[o]nce proceeds come into the possession of a client"—as they did here when the court commissioner permitted \$815,118.34 to be paid directly to Defendants, **Ex. F**—"the term 'proceeds' is limited to identifiable cash proceeds determined in accordance with RCW 62A.9A-315(b)(2)." RCW 60.40.010(5). That statute in turn renders commingled funds identifiable if they remain traceable, including through application of equitable principles. RCW 62A.9A-315(b)(2). Thus, Lane Powell's attorneys' lien "continues in such identifiable cash proceeds" even though the money has been (wrongly) paid to the Defendants. RCW 60.40.010(5).

1 **B. Defendants Should Not Be Permitted to Benefit From Their**
2 **Misrepresentations to the Court Commissioner**

3 Put bluntly, Defendants were not candid with the court commissioner or with Ms.
4 Okano in connection with the Lien Motion. Defendants were clearly aware that Lane
5 Powell's attorneys lien included future interest in addition to the principal amount due
6 (\$384,881.66) up to the date of the lien in early August. **Ex. B** at 1; Dkt. 1, ¶¶ 3.8.
7 Nonetheless, the Lien Motion was based on the false premise that Lane Powell's lien was
8 limited to \$384,881.66. Defendants specifically instructed opposing counsel not to
9 disclose the Lien Motion to Lane Powell. Okano Decl. ¶ 3. Thus, Lane Powell was not in
10 a position to provide the court commissioner with accurate information. Defendants
11 further did not inform Ms. Okano that there was a separate lawsuit pending between Lane
12 Powell and Defendants over the lien claim specifically to foreclose on the lien. *Id.* ¶ 5.

13 Lane Powell is not asking this Court to change the *mechanism* that the parties to
14 the Windermere lawsuit used to permit the judgment debtors to satisfy the judgment (*e.g.*,
15 paying the amount of the Lane Powell lien into the registry of the court and the remainder
16 to Defendants). It has always been Lane Powell's position that the Defendants are entitled
17 to collect on their judgment as long as they do so in a manner that protects Lane Powell's
18 lien interests. (Of course, Defendants had an obligation to do so in a manner consistent
19 with their agreement with Lane Powell, which Defendants clearly chose to ignore.) But,
20 the court commissioner clearly relied on the (inaccurate) information regarding the
21 amount of the lien contained in the Lien Motion in granting the order. Defendants should
22 not be permitted to benefit from receiving money that is subject to Lane Powell's valid
23 attorneys lien based on their own misrepresentations to the court commissioner. The court
24 commissioner's order did not go far enough. Because this is an action to foreclose on the
25 lien and because Lane Powell received no notice whatsoever of the earlier proceeding, this
26

1 Court should order that Defendants supplement the amount in the registry to include the
2 full amount of Lane Powell's lien through trial of this matter, an additional \$57,036.30.⁴

3 **C. The Lack of Notice to Lane Powell Violates Lane Powell's Due Process Rights**

4 Permitting the court commissioner's order to stand without the additional amounts
5 requested in this motion would violate Lane Powell's due process rights. Washington has
6 clearly recognized that attorneys have a property interest in the proceeds of judgments and
7 cases in which they have performed services. *See, e.g.*, RCW 60.40.010, Purpose
8 ("Washington law clearly recognizes that attorneys have a property interest in their
9 clients' cases."). Thus, Lane Powell has a property interest in the judgment that
10 Defendants obtained in the Windermere lawsuit.

11 Although a portion of the judgment was paid into the registry of the court, thus
12 protecting Lane Powell's property interest in that portion, for the reasons described above,
13 the amount ordered by the court commissioner did not include the full extent of Lane
14 Powell's attorneys' lien. Accordingly, when the judgment debtors paid well over
15 \$800,000 to Defendants to satisfy the judgment, they did so in derogation of Lane
16 Powell's attorneys lien and of its property rights in those amounts, depriving Lane Powell
17 of its property and paying it instead to Defendants.

18 Both the state and federal constitutions recognize the fundamental requirements of
19 due process: notice and a right to be heard.

20 For over a century it has been recognized that "Parties whose rights are to
21 be affected are entitled to be heard; and in order that they may enjoy that
22 right they must first be notified." The fundamental requisites of due process
23 are "the opportunity to be heard" and "notice reasonably calculated, under
24 all the circumstances, to apprise interested parties of the pendency of the
action and afford them an opportunity to present their objections." Thus,
"at a minimum" the due process clause of the Fourteenth Amendment

25 ⁴ This amount is calculated as follows: adding nine percent interest as provided in the
26 parties' agreement to \$384,881.66 from August 3, 2011 (the date of the lien) through the end of
March 2013. (That date was selected as an approximation of the end of trial in this matter based
on the Order Setting Civil Case Schedule.) The calculations are shown in **Ex. G.**

1 demands that a deprivation of life, liberty or property be preceded by
2 “notice and opportunity for hearing appropriate to the nature of the case.”
3 Moreover, this opportunity ‘must be granted at a meaningful time and in a
4 meaningful manner.’

5 *Olympic Forest Prods., Inc. v. Chaussee Corp.*, 82 Wn.2d 418, 422, 511 P.2d 1002 (1973)
6 (internal citations omitted). In other words, Lane Powell had a constitutional right to an
7 opportunity to be heard regarding its own attorneys lien “before [it was] deprived of any
8 significant property interest, except for extraordinary situations where some valid
9 governmental interest is at stake that justifies postponing the hearing until after the event.”
10 *Id.* at 424 (internal quotation marks omitted).

11 There were no such “extraordinary” circumstances here. Instead, the judgment
12 debtors and Defendants worked together to submit an agreed motion (at Defendants’
13 request). *See supra* Section II.C. Despite the fact that they were aware that Lane Powell’s
14 attorneys lien included accruing interest, Defendants told the court commissioner that
15 Lane Powell’s lien was for a lesser amount. *Id.* Defendants specifically requested that
16 Lane Powell not be provided with any notice of the Lien Motion in order to deprive Lane
17 Powell of the ability to bring the true facts to the court’s attention. *Id.* When the court
18 commissioner—relying on false information provided by Defendants—allowed the
19 deposit of a lesser amount that Lane Powell’s lien into the registry of the court and
20 permitted the rest to be distributed to Defendants, Lane Powell was deprived of its due
21 process rights.

22 Accordingly, Lane Powell asks the Court to remedy that situation. The court
23 commissioner’s order did not go far enough to protect Lane Powell’s property right in the
24 proceeds of the Windermere lawsuit. Accordingly, Lane Powell respectfully requests that
25 this Court remedy the lack of due process in connection with the Lien Motion and order
26 Defendants to pay the remaining amount of Lane Powell’s lien through trial, \$57,036.30,
into the registry of the court.


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V. CONCLUSION

For the reasons set forth herein, Plaintiff respectfully requests that the Court order Defendants to deposit an additional \$57,036.30, representing interest at the agreed contractual rate until the trial date in this matter. A proposed form of order is lodged herewith.

DATED this 7th day of December, 2011.

MCNAUL EBEL NAWROT & HELGREN PLLC

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

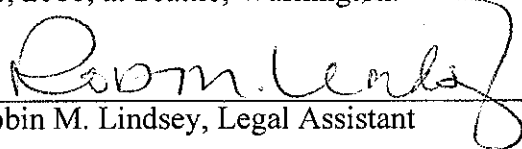
Attorneys for Plaintiff

1 **DECLARATION OF SERVICE**

2 The undersigned declares under penalty of perjury under the laws of the State of
3 Washington that on December 13, 2011, I caused the foregoing **Plaintiff's Motion to**
4 **Require Deposit of Funds Into Court Registry** to be served by electronic mail (per
5 agreement) on the following:

6 Mark and Carol DeCoursey
7 8209 172nd Avenue N.E.
8 Redmond, Washington 98052
9 mhdecoursey@gmail.com
10 Defendants Pro Se

11 DATED this 13th day of December, 2011, at Seattle, Washington.

12 By: 
13 Robin M. Lindsey, Legal Assistant
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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) Defendants’ response and supporting material, if any; and
- (4) Plaintiff’s 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 Plaintiff’s Motion to Require Deposit of Funds Into Court Registry is GRANTED. Defendants are directed to

1 deposit an amount no less than \$57,036.30 into the Registry of the Court immediately and
2 in no event later than ten (10) days from the entry of this Order.

3 IT IS SO ORDERED.

4 DATED this ____ day of December, 2011.

5
6 _____
7 Honorable Richard D. Eadie
8 King County Superior Court Judge

9 Presented by:

10 McNAUL EBEL NAWROT & HELGREN PLLC

11 By: s/Malaika M. Eaton

12 Robert M. Sulkin, WSBA No. 15425

13 Malaika M. Eaton, WSBA No. 32837

14 Attorneys for Plaintiff Lane Powell, PC
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