

Hon. Richard D. Eadie
Noted for Hearing: **March 16, 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 MOTION FOR
ORDER OF CONTEMPT OR RULE
37 SANCTIONS FOR FAILURE TO
RESPOND TO PLAINTIFF'S FIRST
SET OF DISCOVERY REQUESTS
AS ORDERED

I. RELIEF REQUESTED

Despite the fact that the Court has issued an unusually high number of orders in this case in the five months since it was filed—eight in total—Defendants Mark and Carol DeCoursey (“DeCourseys”) have yet to comply with a single one of those orders. Instead, they have consistently refused to comply with the Court’s orders. Plaintiff Lane Powell PC (“Lane Powell”) reluctantly brings this motion after every effort to secure production of the requested documents has failed. Lane Powell has made every effort to avoid having to bring this issue before the Court yet again. This is the second motion for contempt that Lane Powell has been forced to file merely to attempt to secure compliance with the

1 Third, the Court denied the DeCourseys' motion for a discovery plan, again
2 rejecting their privilege and other objections on December 12, 2011. *Id.*

3 Fourth, when, despite these previous rulings, the DeCourseys still persisted in
4 maintaining their privilege claims forcing Lane Powell to move to compel, the Court
5 granted Lane Powell's Motion to Compel Defendants' Responses to Plaintiff's First
6 Discovery Requests on February 3, 2012. *Ex. A* at 2.² In no uncertain terms, the Court
7 directed the DeCourseys to "provide full and complete responses to Plaintiff's First Set of
8 Interrogatories and Requests for Production no later than ten (10) days from the entry of
9 this Order." *Id.*

10 And fifth, the Court disposed of Defendants' Motion to Reconsider Order
11 Compelling Discovery of Privileged Materials on February 29, 2012, and without
12 requesting a response from Lane Powell. In that order, the Court required the DeCourseys
13 to "respond to discovery requests in full with evidence and materials in accordance with
14 this Court's order of February 3, 2012." *Ex. B* at 2. The Court likewise struck the
15 DeCourseys' proposed language relating to the attorney-client privilege. *Id.*

16 **C. Despite the Court's Repeated Rulings on Privilege, the DeCourseys Continue**
17 **to Assert the Documents are Attorney-Client Privileged and Have Not**
18 **Supplemented Their Responses to Lane Powell's Requests for Production**

19 There can be no doubt that the DeCourseys were aware of the Court's orders
20 compelling production of discovery responses and denying reconsideration within ample
21 time to comply with them. *Ex. C; Ex. D* at 2. Yet, the DeCourseys have taken no steps to
22 comply with the Court's orders as directed. Instead, the DeCourseys have engaged in
23 what can only be described as an attempt to manufacture excuses for their noncompliance
24 and delay Lane Powell's efforts to ensure compliance so that it can proceed to litigate this
25 case on the merits.

26 ² Exhibits A–D referenced herein are attached to the Declaration of Malaika M. Eaton
filed in support of this motion.

1 ample time to comply with its mandate. *See supra* Section II (C). It is likewise
2 undisputed that the DeCourseys were capable of complying with the Court's order by
3 providing the documents requested. *Id.* Indeed, even in their motion for reconsideration,
4 they make no claim that they are unable to comply. Dkt. 97. Rather, the DeCourseys
5 persist in refusing to comply with the Court's February 3, 2012 order compelling
6 production of discovery responses based on privilege, even after Lane Powell informed
7 them that the Court's February 29, 2012 order denying reconsideration did not—and,
8 under the Civil Rules, cannot—grant the relief they claim it does.

9 Indeed, particularly in light of the communications between the parties, the
10 DeCourseys' refusal to comply and disregard of the language of the Court's order is
11 willful. *Carlson*, 116 Wn. App. at 737. It is likely that the DeCourseys are feigning
12 misunderstanding of the Court's order denying their request for reconsideration to avoid
13 complying with the Court's mandate that, by suing Lane Powell for malpractice,
14 Defendants have waived the attorney-client privilege and therefore must fully and
15 completely respond to Lane Powell's discovery requests. There is no other legitimate
16 explanation for their deliberate disregard of the actual language of the Court's Order and
17 their refusal to acknowledge that the Court's Rules would not permit the Court to have
18 granted the DeCourseys' such relief without seeking a response from Lane Powell.

19 Finally, there can be no dispute that the DeCourseys' continued refusal to comply
20 with the Court's orders has prejudiced Lane Powell. As described in Lane Powell's
21 motion to compel, Lane Powell noted the depositions of the DeCourseys for November
22 2011, after the DeCourseys should have provided full and complete discovery responses.
23 Dkt. 71 at 2-3. Lane Powell has been stymied in its efforts to move this case forward on
24 both its claims and to defend the counterclaims brought by the DeCourseys because of the
25 DeCourseys' refusal to produce documents as ordered. *Id.* at 5, 7. This prejudice cannot
26 be remedied by mere monetary sanctions. Instead, as CR 37(b)(2) and the case law

1 interpreting it make clear, additional sanctions are appropriate for such a persistent pattern
2 of willful defiance of Court orders. Under such circumstances, Lane Powell respectfully
3 requests that the Court hold Defendants in contempt and order sanctions appropriate to
4 compel compliance with the Court's order and to reimburse Lane Powell for the costs it
5 has incurred in seeking compliance or sanction the DeCourseys pursuant to CR 37(b)(2).

6 **V. CONCLUSION**

7 For the reasons set forth herein, Lane Powell respectfully requests that the Court
8 hold Defendants in contempt and sanction them in a manner sufficient to ensure
9 compliance with the order and to reimburse Lane Powell for the costs incurred in seeking
10 compliance or sanction them pursuant to CR 37(b)(2). A proposed form of order is
11 lodged herewith.

12 DATED this 8th day of March, 2012.

13 McNAUL EBEL NAWROT & HELGREN PLLC

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15 By: /s/ Malaika M. Eaton
16 Robert M. Sulkin, WSBA No. 15425
Malaika M. Eaton, WSBA No. 32387

17 Attorneys for Plaintiff
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