The Truth, The Lie, And The Judge

Federal law (15 U.S.C. 78u-4) provides that in any private action under the Securities Exchange Act "upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) . . . as to any complaint, responsive pleading, or dispositive motion" and mandates that, if the district court finds that a violation of Rule 11(b) occurred, the court "shall impose sanctions" under Rule 11.

Would that such were the law in Washington on all civil cases.

The Truth	The Lie	And the Judge
1. On Nov. 12, 2011, while addressing discovery issues, Judge rules that "... civil rules will govern discovery."[1] Among the civil rules is CR 26(b)(1), exempting attorney-client privilege materials and information from discovery. Typo: Dkt. 44 was dated Dec. 12, 2011	On Dec. 5, 2011, Lane Powell asserts: "... the Court has already determined that the Defendants have waived their attorney client privilege ..."[2] (R. Sulkin & M. Eaton.)	On Dec. 6, DeCourseys file a motion asking judge to clarify his position on privilege, whether he had communicated to Lane Powell *ex parte*, or Lane Powell is simply lying.[3 Judge denies the motion and refuses to clarify his position on attorney-client privilege.[4]
2. On Feb. 29, 2012 (filed Mar. 2, 2012), Judge orders DeCourseys to "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."[5] Those court rules protect attorney client privilege.	On Mar. 8, 2012, truncating the language citing the court rules that protect privilege, Lane Powell argues, "the Court required the DeCourseys to 'respond to discovery requests in full with evidence and materials in accordance with this court's order of 2/3/2012.'"[6] (R. Sulkin & M. Eaton)	On Apr. 27, 2012, Judge holds DeCourseys in contempt and levies sanctions for not obeying Lane Powell's truncated version of the order.[7]
3. On Jun. 25, 2012, DeCourseys ask Judge to sanction Lane Powell (under CR 11) for truncating the wording of the Feb. 29, 2012 court order (filed Mar. 2, 2012) in its successful motion for contempt and sanctions against DeCourseys.[8] Lane Powell's doctored wording makes it appear that DeCourseys' attorney-client privilege might not be respected in discovery.	In response, Lane Powell argues, "DeCourseys latch on to the [Court's] passing citation to general evidence and discovery rules to twist the Court's order to mean the opposite of what it actually says."[9] (R. Sulkin & M. Eaton)	On Jul. 4, 2012, Judge rules on the truncated wording: "However the inclusion or omission of those specific words does not alter the duties of Defendants under this Court's Order of February 3, 2012. ... Defendants are correct that Plaintiff's citation to the February 29 Order should not have concluded the quotation from that Order with a period, unless it either included the CR26 and ER 502 language, or replaced that language with an ellipsis. Attention to that detail would have saved us all the time and effort directed to this motion ..."[10] Judge does not explain how the order citing those rules does not protect privilege.

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4. The Aug. 3, 2011 attorney lien states, "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 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."[11] The lien amount includes fees, costs advanced, and interest on the balance.[12] On Nov. 3, 2011, $384,881.66 was deposited to the Court registry.[13]	Lane Powell tells the Court: "…on August 3, 2011, Lane Powell served and filed an attorneys' lien in accordance with RCW 60.40.010 and applicable law for the value of services rendered and costs advanced on behalf of the DeCourseys in an amount not less than $384,881.66 ***plus interest after August 3, 2011*** (the 'attorneys' lien')"[14] (Emphasis added.) Lane Powell quotes the same language in Dec. 13, 2011 motion.[15] (R. Sulkin & M. Eaton)	Judge orders DeCourseys to deposit $57,036.30 in prejudgment interest to the court registry. The interest is computed for the time between the filing of the lien and the date of the anticipated judgment. Without hearing the facts of the case, Judge is apparently anticipating the decision will be will be in favor of Lane Powell.[16]
5. Pamela Okano is a declarant Lane Powell cited in support its Dec. 13, 2011 motion.[17] On Nov. 2, 2011, Okano signed a declaration stating, "In August 2011, the Lane Powell law firm, the judgment creditors' attorneys, withdrew from the case and filed a notice of attorney lien in the amount of $384,881.66."[18]	On Dec. 13, 2011, Lane Powell tells the court, "Defendants misrepresented the amount of Lane Powell's attorneys lien to the court commissioner in the Windermere lawsuit."[19] Lane Powell also argues: "…Lane Powell's lien actually included interest that was continuously accruing on the amounts Defendants' owed Lane Powell."[20] (R. Sulkin & M. Eaton)	DeCourseys moved the Court to have Lane Powell sanctioned for deliberately misrepresenting the facts of the lien based on the documentary evidence.[21] Judge denied the motion, and did not reverse the order for DeCourseys to pay prejudgment interest.[22]
6. Lane Powell contemporaneously knew and approved of DeCourseys working with Windermere to obtain payment on the judgment.[23] Lane Powell shareholder Grant Degginger attested to awareness of those efforts.[24] Lane Powell shareholder Michael Dwyer approved in writing of DeCourseys' efforts to negotiate full payment of the Windermere judgment.[25] Lane Powell worked with DeCourseys' atty, Earl-Hubbard throughout in multiple emails and phone calls.[26]	On Dec. 13, 2011, Lane Powell charges that DeCourseys "…pay[ed] an amount less than the full amount of Lane Powell's lien into the registry of the court… Defendants provided no notice whatsoever to Lane Powell before depriving it of its lien rights in the judgment proceeds … Defendants also specifically requested that counsel for the judgment debtor likewise keep Lane Powell in the dark…"[27] (R. Sulkin & M. Eaton)	Apparently finding that DeCourseys had compromised Lane Powell's lien, Judge awards Lane Powell pre-judgment interest in the amount of $57,036.30.[28] Without hearing the facts of the case, Judge is apparently anticipating the judge or jury will find in favor of Lane Powell.

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7. Lane Powell is a completely modern law firm with both paperless storage and paper archives. On Jul. 9, 2012, Lane Powell admits to the Court of Appeals in July, 2012 that it has all the documents it is seeking from DeCourseys in discovery.[29] On Oct. 2012, Lane Powell tells the Court, "Fortunately, Lane Powell's case is straightforward and clearly subject to summary resolution based on the discovery already exchanged."[30] Lane Powell carefully does not deny that it has *all* the documents it seeks from DeCourseys.[31]	On March 8, 2012, Lane Powell tells the court, "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." This statement is repeated in various forms from March 2012 until August 2012, [32] including: "there can be no dispute that the DeCourseys' continued refusal to comply with the Court's orders has prejudiced Lane Powell."[33] (R. Sulkin, M. Eaton, H. Montgomery)	Judge rules that DeCourseys has "prejudiced" Lane Powell in the preparation of its case by refusing to produce privileged material, twice finds DeCourseys in contempt, levies sanctions,[34] and strikes DeCourseys claims and defenses. Judge rules, "The discovery sought by plaintiffs is clearly material to its case and to its defense of Defendant's counterclaims and affirmative defenses."[35] Even with the new evidence that Lane Powell has admitted to the Court of Appeals that it has all the documents, Judge refused to call Lane Powell to account for the lie and reverse his earlier ruling.[36]
8. In October 2012, Lane Powell attorney Hayley Montgomery moves for Summary Judgment. She tells the court: "The most recent round of discovery is irrelevant to … all the issues raised in Lane Powell's motion [for summary judgment]. All the documents upon which Lane Powell relies either been exchanged in discovery months ago or are part of the court record in this case or the Windermere litigation." [37]	Lane Powell presents no evidence from discovery material produced by DeCourseys.[38] All evidence was from Lane Powell's own files. Thus Montgomery proves Sulkin & Eaton lied when they claimed Lane Powell had been "stymied" by DeCoursey's withholding of attorney-client privileged materials.[39]	Having already stricken our claims and defenses, ruling that we had "prejudiced" Lane Powell by withholding privileged documents, judge grants Summary Judgment to Lane Powell on the evidence of documents that had been in Lane Powell's possession since before the beginning of the case.[40] Compare with Judge's ruling (Dkt. 164), "The discovery sought by plaintiffs is clearly material to its case and to its defense of Defendant's counterclaims and affirmative defenses."[41]
9. Both before the summary judgment decision[42] and afterwards (in a motion for reconsideration),[43] DeCourseys showed the court that Lane Powell mounted contradictory arguments on whether its case preparation was stymied by DeCourseys withholding privileged material from discovery. It is a classic example of judicial estoppel.[44]	Lane Powell argued, irrelevantly, "The most recent round of discovery is irrelevant to the estoppel issue and, in fact, all the related issues raised in Lane Powell's motion."[45]	Judge grants the Summary Judgment to Lane Powell and does not comment on judicial estoppel.[46]
10. On August 3, 2011, Lane Powell filed its attorney's lien against the Windermere judgment.[47] On October 5, 2011, Lane Powell served and filed suit against DeCourseys.[48] On November 3, 2011 the judgment on the remand of the Windermere lawsuit was filed.[49] On November 11, 2011, Windermere made the first partial satisfaction of judgment.[50] The basic documents of the case show the sequence of events.	On August 15, 2012, Lane Powell told the Court that, "Lane Powell filed and served an attorneys' lien in the Windermere lawsuit after judgment had been entered against Windermere."[51] This is a false statement of the sequence of events.	On June 19, 2012, concerning these attorneys, Judge ruled, "the quality of Plaintiff's work product in this case shows a level of skill and preparation commensurate with the hourly fees charged…"[52]

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11. A 1.3 multiplier on the fees was awarded by the trial court in the Windermere lawsuit. Judge Fox stated: "Now, here I think that the plaintiffs [DeCourseys] are entitled to attorney's fees.[53] … So on a base figure of $356,142 in attorney's fees, I would add 30 percent as a multiplier because of the high risk nature of this particular litigation, which would result in a total attorneys fees award of $462,985."[54]	Lane Powell argued that Judge Fox awarded the fees to "Lane Powell," and that Judge Fox added a fee multiplier for Lane Powell's "exceptional" legal work.[55] "… [c]ourts awarded Lane Powell all the fees and costs it sought, even adding a 30% multiplier for its exceptional work."[56].	Without reviewing the supporting documentation, Judge signed Lane Powell's pre-written order (Dkt. 333) and cited "Judge Fox's analysis on Lane Powell's exception work done on the DeCourseys' behalf."
12. In the Windermere lawsuit, DeCourseys were sued by a single party, V&E Medical Imaging Services, Inc.[57] DeCourseys filed counterclaims and third party claims against other parties.	On Nov. 10, 2011, Lane Powell told the Court the Windermere lawsuit was "brought against [the DeCourseys] by numerous parties."[58] (R. Sulkin & M. Eaton.)	

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1 Dkt. 44. (Nov. 12, 2011) [Typo: Dkt. 44 was dated Dec. 12, 2011]
2 Dkt. 36, Para 65. (Dec. 5, 2011)
3 Dkt. 38. (Dec. 6, 2011)
4 Dkt. 53. (Dec. 16, 2011)
5 Dkt. 98. (Mar. 2, 2012)
6 Dkt. 101 Pg. 4 at 13-14. (Mar. 8, 2012)
7 Dkt. 106A (Apr. 27, 2012)
8 Dkt. 140. (Jun. 25, 2012)
9 Dkt. 151 Pg. 2 at 23-25 (Jun. 29, 2012)
10 Dkt. 161 Pg 1 at 17 9 (Jul. 3, 2012).
11 Dkt. 54, Pg. 1 at 26, Pg. 2 at 1-6.; Pg. 4 at 8-14 and supporting Exhibits. (Dec. 19, 2011)
12 See invoices at Dkt. 255 (Oct. 19, 2012).
13 Dkt. 47 Exhibit E (Dec. 13, 2011)
14 Dkt 1 ¶ 3.8. (Oct. 5, 2011)
15 Dkt. 46;Pg. 5 at 11-14. (Dec. 13, 2011)
16 Dkt. 63. (Dec. 21, 2011)
17 Dkt 48 (Dec. 13, 2011) in support of Mtn. at Dkt. 46 (Dec. 13, 2011)
18 Dkt. 165, Ex. 10 ¶7 (July 9, 2012)
19 Dkt. 46, Pg. 1 at 16-26, and, in various forms, repeated 8 times: Pg.2 at- 8-10; Pg. 4 at 16- pg. 5 1-2; Pg. 5 at 4; Pg.5 at 14-16; Pg. 6 at 1-2; Pg.8 at 6-8; Pg. 8 at 22-23; Pg. 10 at 12-13. (Dec. 7, 2011)
20 Dkt. 46 Pg,. 5 at 4-6 (Dec. 13, 2011)
21 Dkt. 165. (July 9, 2012)
22 Dkt. 176. (July 16, 2012)
23 Dkt. 54, Pg. 4 at 16-24; Pg. 5 at 1-17; and supporting exhibits. (Dec. 19, 2011)

24 Dkt. 59, Pg. 2., Para. 3. (Dec. 20, 2011).
25 Dkt. 174, Exhibit E. (Jul. 16, 2012) Dwyer stated: "DeCourseys are free to negotiate any arrangement they want with Windermere's insurer concerning payment ..."
26 Dkt. 55 (Dec. 19, 2011)
27 [1] Dkt. 46, Pg. 2, 1-5. (Dec. 13, 2011); [2] Dkt. 148, Pg 3 at 12-13 (Jun. 27, 2012).
28 Dkt. 63. (Dec. 21, 2011)
29 Court of Appeals, Div. 1, *Lane Powell PC's Answer to DeCourseys Second Motion for Stay of Orders*, Jul. 9, 2012, pg. 16, Ftn. 5; appearing here as Dkt. 174 exhibit C 9 (Jul. 16, 2012) .
30 Dkt. 253; Pg 1, at 20-22 (Oct. 19, 2012).
31 Dkt 18, Pg. 7 at 13-14 9 (Nov. 10, 2011).
32 [1] Dkt. 101, Pg. 9 at 23-25. (Mar. 8, 2012); [2] Dkt. 115 Pg. 2 at 7-9 (May. 1, 2012); [3] Dkt. 148, Pg. 5 at 8-9; Pg 11 at 7-8-19-22; (Jun. 27, 2012); [4] Dkt. 192, Pg. 4 at 11-12 (Aug. 8, 2012)
33 Dkt. 101, Pg. 9 at 19-20.
34 Dkt. 106 A. (Apr. 27, 2012)
35 Dkt. 164. (Jul. 6, 2012)
36 Dkt. 185 (Jul. 27, 2012).
37 Dkt. 278. Pg. 5 at 1-4. (Nov. 9, 2012)
38 Dkt. 253 (Oct. 19, 2012), 254 (Oct. 19, 2012), 255 (Oct. 19, 2012) , 284 (Nov. 13, 2012), 285 (Nov. 13, 2012).
39 [1] Dkt. 101, Pg. 9 at 19-26. (Mar. 8, 2012); [2] Dkt. 115 Pg. 2 at 7-9 (May. 1, 2012); [3] Dkt. 148, Pg. 5 at 8-9; Pg 11 at 7-8-19-22; (Jun. 27, 2012)
40 Dkt. 164. (Jul. 6, 2012)
41 Dkt. 164. (Jul. 6, 2012)
42 Dkt. 275 Pg. 4 at 14-23. (Nov. 5, 2012)
43 Dkt. 296 Pg. 12 at 17 through Pg 13; Pg. 14, at 24; Dkt. 330, Pg. 10 at 16; Pg. 12 at 18; Dkt. 344, Pg. 2 at 16.
44 Dkt. 344, Pg. 3 at 14 et seq. (Dec. 27, 2012)
45 Dkt. 278 Pg. 5 at 1-2. (Nov. 9, 2012)
46 Dkt. 329B. (Dec. 13, 2012)
47 Dkt. 47 Exhibit A (Dec. 13, 2011)
48 Dkt. 1 (Oct. 5, 2011)
49 Dkt. 225, Exhibit A (Aug. 16, 2012)
50 Dkt. 225, Pg. 2, at 6-8 and Exhibit A. (Aug. 16, 2012)
51 Dkt. 218 Pg. 4 at 12-14 (Aug. 15, 2012)
52 Dkt. 155 (Jun. 29, 2012)
53 Dkt. 254, Exhibit HH Pg. 4 at 4. (Oct. 19, 2012)
54 Dkt. 254, Exhibit HH Pg. 12-16. (Oct. 19, 2012)
55 Dkt. 253, Pg. 22 at 9; Pg. 23 at 1; Dkt. 300 Pg. 1 at 9-11. (Oct. 19, 2012)
56 Dkt. 300, Pg. 1 at 9-11. (Nov. 30, 2012)
57 Dkt. 47 Exhibit A Pg. 1. (Dec. 13, 2011)
58 Dkt. 18, Pg. 2 at 9-12. (Nov. 10, 2011).