

2005 AUG -4 PM 4:03

JEANNE RICKS, CLERK

BY: 

1 FAVOUR MOORE & WILHELMSSEN, P.A.
2 Post Office Box 1391
3 Prescott, AZ 86302-1391
4 Ph: (928)445-2444
5 David K. Wilhelmsen, #007112
6 Marguerite Kirk, #018054

7 Attorneys for Plaintiffs

DM

8 **IN THE SUPERIOR COURT OF ARIZONA**

9 **COUNTY OF YAVAPAI**

10 **JOHN B. CUNDIFF** and **BARBARA C. CUNDIFF**, husband and wife; **BECKY NASH**, a married woman dealing with her separate property; **KENNETH PAGE** and **KATHRYN PAGE**, as Trustee of the Kenneth Page and Kathryn Page Trust,

11 Plaintiffs,

12 vs.

13 **DONALD COX** and **CATHERINE COX**, husband and wife,

14 Defendants.
15
16

Case No. CV 2003-0399

Division 1

**PLAINTIFFS' COUNSEL'S
CERTIFICATION PURSUANT TO
RULE 37(a)(2)(C)
IN SUPPORT OF PLAINTIFFS'
MOTION FOR
PROTECTIVE ORDER
AND MOTION TO QUASH**

17 Counsel for Plaintiffs, John and Barbara Cundiff, Becky Nash, and, Kenneth and Kathryn
18 Page, by and through undersigned counsel, in accordance with Rule 37(a)(2)(C), Ariz.R.Civ.Proc.,
19 states that he has conferred in writing with Defendants' counsel in a good faith effort to resolve the
20 discovery dispute between the parties concerning Defendants' request for production of documents
21 propounded August 1, 2005. *See, correspondence between Plaintiffs' counsel and Defendants'
22 counsel dated August 2, 3 and 4, 2005 (true and correct copies attached hereto and by this reference
23 incorporated herein as Exhibits 1 through 6).* Plaintiffs' counsel and Defendants' counsel have been
24 unable to resolve their discovery dispute. Further, Defendants' counsel failed to provide Plaintiffs'
25 counsel with any notice of the subpoena *duces tecum* they obtained from the Clerk of the Court,
26 August 2, 2005, and served on non-party Alfie Ware on August 3, 2005. Defendants' counsel's failure
to provide the requisite notice to undersigned counsel, coupled with Defendants' counsel's refusal

1 to withdraw their request for production, renders any discussion with opposing counsel on the issue
2 of the subpoena *duces tecum* futile.

3 Therefore, Plaintiffs request that this Court consider and schedule oral argument on Plaintiffs'
4 motion for protective order and motion to quash subpoena *duces tecum* served on a non-party to this
5 action, Alfie Ware.

6 RESPECTFULLY SUBMITTED this 4th day of August, 2005.

7 FAVOUR MOORE & WILHELMSSEN, P.A.

8
9 By: 

10 David K. Wilhelmsen
Marguerite Kirk
Post Office Box 1391
Prescott, Arizona 86302-1391
Attorneys for Plaintiffs

11 Original of the foregoing
12 filed this 4th day of August,
13 2005, with:

14 Clerk, Superior Court of Arizona
15 Yavapai County
120 S. Cortez St.
Prescott, Arizona 86302

16 A copy hand-delivered this
17 4th day of August, 2005, to:

18 Honorable David L. Mackey
19 Division One, Superior Court of Arizona
Yavapai County
120 S. Cortez St.
Prescott, Arizona 86302

20 and, a copy mailed this
21 4th day of August, 2005, to:

22 Mark Drutz
23 Jeffrey Adams
MUSGROVE, DRUTZ & KACK, P.C.
1135 Iron Springs Road
24 Prescott, Arizona 86302
Attorneys for Defendants Cox

25
26 By: 

David K. Wilhelmsen

EXHIBIT 1

Favour Moore & Wilhelmsen, P.A.

David K. Wilhelmsen

1580 Plaza West Drive
Post Office Box 1391
Prescott, Arizona 86302

Telephone (928) 445-2444
Facsimile (928) 771-0450
DavidWilhelmsen@FMWlaw.net

August 2, 2005
File No. 10641.001

via Facsimile & U.S. Mail

Mark Drutz
MUSGROVE, DRUTZ & KACK, P.C.
Post Office Box 2720
Prescott, Arizona 86302-2720

Re: Cundiff, et al. v. Cox – Yavapai County Cause No. CV 2003-0399

Dear Mark:

In accordance with Rule 37(a), Ariz.R.Civ.Proc., this correspondence is our good faith effort to resolve a discovery dispute concerning your request for production of documents dated August 1, 2005. Based upon the documents you demand to be produced, it is apparent that you attempt to establish the "reasonableness" of your firm's attorney's fees by comparison to our firm's attorney's fees. There is no basis in law or fact for your position. Your attention is directed to *Schweiger v. China Doll Restaurant, 138 Ariz. 183, 673 P.2d 927 (App. 1983)*, which provides, in relevant part, that the court is to look to the requesting attorney's skills and the overall fee charged by attorneys in the community of similar skill, taking into account the complexity of the matter. Judge Mackey is well versed in attorney fee applications, and is quite aware of the prevailing rate charged by attorneys in the community.

Therefore, please withdraw your request for production immediately. Should you fail to do so in writing by 5:00 p.m., August 3, 2005, we will file a motion for protective order and request our attorney's fees.

Secondly, we are in receipt of Ms. Sargent-Flack's letter demanding that we stipulate to dismissal of count III of our clients' amended complaint. As you were in attendance at the oral argument before Judge Mackey on July 26, 2005, you are aware that Ms. Sargent-Flack's request is

misplaced and contrary to our agreement to the Court that claims not disposed by summary judgment would remain in abeyance pending appellate review.

Very truly yours,



David K. Wilhelmsen
For the Firm

cc: Kenneth and Kathryn Page
John and Barbara Cundiff

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
142	8/ 2 10:45....	0'48"	928 445 5980	Send.....	3/ 3	EC144	Completed.....

Total 0'48" Pages Sent: 3 Pages Printed: 0

The Law Offices of
FAVOUR MOORE & WILHELMSEN, P.A.
P. O. Box 1391
Prescott, AZ 86302
Telephone: (928) 445-2444
Telecopier: (928) 771-0450

FAX COVER SHEET

DATE: August 2, 2005

TO: Mark Drutz

FROM: Dave Wilhelmsen

FAX NO.: (928) 445-5980

PHONE: (928) 445-5935

RE: Cundiff, et al. v. Cox
File No. 10641.001

TOTAL PAGES TRANSMITTING (INCLUDING COVER SHEET): 3

SPECIAL INSTRUCTIONS:

If there is a problem with transmittal, please call the operator listed below at (928) 445-2444.

OPERATOR: Karen

If you have not properly received this teletcopy, please call at (928) 445-2444
Our teletcopy number is (928) 771-0450

The information contained in this facsimile is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, the employee, or agent responsible to deliver it to the intended recipient, please notify Favour, Moore & Wilhelmsen, P.A. immediately. You are hereby notified that any dissemination, distribution or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (collect), and return the original message to us at the above address via the U.S. Postal service. Thank you

EXHIBIT 2

MUSGROVE, DRUTZ & KACK, P.C.
ATTORNEYS AT LAW
POST OFFICE BOX 2720, PRESCOTT, ARIZONA 86302-2720

JAMES B. MUSGROVE
MARK W. DRUTZ
THOMAS P. KACK
GRANT K. MCGREGOR
JOHN G. MULL
JEFFREY R. ADAMS
CATHY L. KNAPP
SHARON SARGENT-FLACK

PRESCOTT OFFICE
1135 IRON SPRINGS ROAD
PRESCOTT, ARIZONA 86305

PRESCOTT VALLEY OFFICE
3001 MAIN STREET, SUITE 2C
PRESCOTT VALLEY, ARIZONA 86314

TELEPHONE
(928) 445-5935
(928) 445-5980 (FAX)

TELEPHONE
(928) 775-9565
(928) 775-9550 (FAX)

August 2, 2005

File No. 9449-1

VIA TELECOPIER - 771-0450

David K. Wilhelmsen, Esq.
Favour, Moore & Wilhelmsen, P.A.
1580 Plaza West Drive
Post Office Box 1391
Prescott, Arizona 86302-1391

Re: John B. Cundiff and Barbara C. Cundiff, et al. v. Donald Cox and Catherine Cox
Yavapai County Superior Court Cause No. CV 2003-0399

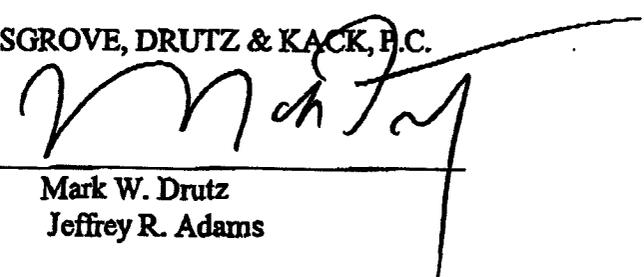
Dear David:

With respect to your August 2, 2005 letter regarding our Request for Production, we utilized the Request for Production of Documents And Things which you served upon us in Sims v. Harper Family Trust Dated December 30, 1982, et al., Yavapai County Superior Court Case No. CV 2001-0123, as the basis for our Request for Production. Enclosed please find your Request for Production. As you recall, you served the foregoing Request upon us prior to the Court's determination of the reasonableness of your attorneys' fees in that case. Frankly, I am at a loss as to why it is appropriate for you to serve me with virtually an identical Request for Production but it is improper for me to do so.

I believe the hourly rates being charged by your law firm and the hours which your law firm billed in prosecuting your case is relevant to the hourly rates we are charging and the time which we spent defending the case. If you are willing to stipulate that our hourly rates of \$175.00 per hour for Jeff Adams and myself and \$155.00 for Sharon Sargent-Flack and the time we spent defending this case (483 hours through July 29, 2005) are reasonable, then we will withdraw our Request for Production.

Sincerely,

MUSGROVE, DRUTZ & KACK, P.C.

By: 

Mark W. Drutz
Jeffrey R. Adams

MWD/jw
Enclosure
cc: Mr. and Mrs. Donald Cox

1 FAVOUR MOORE & WILHELMSSEN, P.A.

2 Post Office Box 1391
3 Prescott, AZ 86302-1391
4 928/445-2444

5 David K. Wilhelmsen, 007112

6 Attorneys for Plaintiffs/Counterdefendants

7 SUPERIOR COURT OF ARIZONA

8 COUNTY OF YAVAPAI

9 DANIEL C. SIMS and NORA E. SIMS,)
10 husband and wife,)

11 Plaintiffs,)

12 vs.)

13 HARPER FAMILY TRUST DATED)
14 DECEMBER 30, 1982, HAROLD E. GRIES,)
15 Trustee; SEDONA HIDDEN VALLEY)
16 LIMITED PARTNERSHIP, OLIVER J.)
17 HARPER and SHARON J. HARPER, husband)
18 and wife, and CINDY H. McCAIN, as Trustee)
19 of the Cindy Hensley McCain Family Trust)
20 dated November 9, 1988, General Partners.)

21 Defendants.)

22 _____)
23 SEDONA HIDDEN VALLEY LIMITED)
24 PARTNERSHIP, an Arizona Limited)
25 Partnership; and HAROLD E. GRIES as)
26 Trustee of the Harper Family Trust dated)
December 30, 1982,)

Counterclaimants,

vs.

DANIEL C. SIMS and NORA E. SIMS,)
husband and wife,)

Counterdefendants.

No. CV 820010123

Division 6

**REQUEST FOR PRODUCTION OF
DOCUMENTS AND THINGS**

25 ---

26 ---

1 TO: Defendants/Counterclaimants SEDONA HIDDEN VALLEY LIMITED PARTNERSHIP and
2 HAROLD E. GRIES as Trustee of the Harper Family Trust dated December 30, 1982, through
3 their attorneys of record, MUSGROVE, DRUTZ & KACK, P.C. (Mark W. Drutz), Post Office
4 Box 2720, Prescott, AZ 86302-2720

4 Plaintiffs Daniel and Nora Sims ("Simses"), pursuant to ARIZ. R. CIV. P. 34, request
5 Defendants/Counterclaimants above named ("SHV" and "Harper") to produce for Plaintiffs' inspection
6 and copying at the offices of FAVOUR MOORE & WILHELMSSEN, P.A., Plaza West Commerce
7 Center, 1580 Plaza West Drive, Prescott, Arizona 86303, December 21, 2004 at the hour of 10:00 a.m.,
8 the documents and things as described herein.

9 INSTRUCTIONS FOR USE

- 10 1. In producing the documents designated below, you are requested to furnish all documents
11 known or available to you, regardless of whether a document is currently in your possession,
12 custody or control or that of your attorneys, employces, agents, investigators or other
13 representatives or is otherwise available to you.
- 14 2. If, for any reason, you are unable to produce in full any document requested:
 - 15 a. Produce each such document to the fullest extent possible;
 - 16 b. Specify the reasons for your inability to produce the remainder; and
 - 17 c. State in detail whatever information, knowledge or belief you have concerning the
18 whereabouts and substance of each document not produced in full.
- 19 3. If any document requested was at one time in existence but is no longer in existence, please state
20 for each document as to which that is the case:
 - 21 a. The type of document;
 - 22 b. The types of information contained therein;
 - 23 c. The date upon which it ceased to exist;
 - 24 d. The circumstances under which it ceased to exist;
 - 25 e. The identity of all persons having knowledge of the circumstances under which it ceased
26 to exist; and
 - 27 f. The identity of all persons having knowledge or who had knowledge of the contents
thereof.
- 4. For each document requested which you are unable to produce and which was at any time within
your possession, custody or control or to which you had access at any time, specify in detail:

- 1 a. The nature of the document (i.e., letter, memorandum, etc.);
- 2 b. The author of the document;
- 3 c. All recipients of the documents and any copy thereof;
- 4 d. A summary of the information contained in the document;
- 5 e. The date on which you lost, relinquished or otherwise ceased to have possession,
- 6 custody, control of or access to the document;
- 7 f. Identify all persons having knowledge of the circumstances whereby you lost,
- 8 relinquished or otherwise ceased to have possession, custody or control of or access to
- 9 the document; and
- 10 g. Identify all persons who have or have had knowledge of the contents of the document
- 11 in full or in part.
- 12 5. In the event you seek to withhold or do withhold any document, in whole or in part, on the basis
- 13 that it is not subject to discovery, produce a list of all such documents and, as to each such
- 14 document, state:
- 15 a. The name of each author, writer, sender or initiator of each document;
- 16 b. The name of each recipient, addressee or party to whom such document was sent or
- 17 intended to be sent;
- 18 c. The name of each and every person who received a copy of the document;
- 19 d. The date of the document or, if no date appears on the document, the date the document
- 20 was prepared;
- 21 e. The title of the document, or if it has no title, then such other description of the
- 22 document and its subject matter as shall be sufficient to identify the document; and
- 23 f. The grounds claimed for withholding the document from discovery (e.g., attorney-client
- 24 privilege, work product, or any other grounds) and the factual basis for such a claim.
- 25 6. In accordance with ARIZ. R. CIV. P. 34(b), as to each document produced, you are requested to
- 26 designate the paragraph and subparagraph of this request to which each such document is
- responsive.
- 7. If you dispute the propriety of Instructions 2, 3, 4 and/or 5 as being outside the scope of Rule
- 34 or otherwise objectionable, then consider such instructions as interrogatories posed pursuant
- to ARIZ. R. CIV. P. 33 and answer them accordingly.
- 8. This Request is a continuing one and requires that you produce all responsive documents and
- tangible objects whenever you obtain or become aware of them, even if they are not in your
- possession or available to you on the date you first produce documents pursuant to this request.
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DEFINITIONS

- 20 1. "Plaintiff," "you" or "your" means the plaintiffs in the above-captioned matter and the past and present employees, representatives, agents and attorneys for plaintiffs.
- 21 2. "Any," "each" and "all" shall be read to be all inclusive and to require the production of each and every document (as hereinafter defined) responsive to the particular request for production in which such term appears.
- 22 3. "And" and "or" and any other conjunctions or disjunctions used herein shall be read both conjunctively and disjunctively so as to require the production of all documents (as hereinafter defined) responsive to all or any part of each particular request for production in which any conjunction or disjunction appears.
- 23 4. "Person" means an individual, firm, corporation, association, organization or any other entity.
- 24 5. The term "document" includes all electronic media or other tangible forms in which information is stored and includes all written or graphic matter of every kind and description, however produced or reproduced, WHETHER DRAFT OR FINAL, original or reproduction, including, but not limited to, letters, correspondence, memoranda, notes, films, transcripts, contracts, agreements, licenses, memoranda of telephone conversations or personal conversations, microfilm, telegrams, books, newspaper articles, magazines, advertisements, periodicals, bulletins, circulars, pamphlets, statements, notices, reports, rules, regulations, directives, teletype messages, minutes of meetings, interoffice communications, reports, financial statements, ledgers, books of account, proposals, prospectuses, offers, orders, receipts, working papers, desk calendars, appointment books, diaries, time sheets, logs, movies, tapes for visual or audio reproduction, recordings or materials similar to any of the foregoing, however denominated, and including writings, drawings, graphs, charts, photographs, data processing results, printouts and computations (both in existence and stored in memory components), and other compilations from which information can be obtained or translated, if necessary, through detection devices into reasonably usable form. THE TERM "DOCUMENT" INCLUDES ALL COPIES OF A DOCUMENT WHICH CONTAIN ANY ADDITIONAL WRITING, UNDERLINING, NOTES, DELETIONS OR ANY OTHER MARKINGS OR NOTATIONS OR ARE OTHERWISE NOT IDENTICAL COPIES OF THE ORIGINAL.

25
26

ITEMS REQUESTED

- 20 1. Each and every agreement, memorandum of understanding, document and/or correspondence reflecting any written fee agreement (including any flat-fee reduction agreement) by and between SHV and/or Harper and the following law firms: (1) MUSGROVE, DRUTZ & KACK, P.C.; (2) MURPHY, LUTEY, SCHMITT & FUCHS, PLLC; and (3) GALBUT & HUNTER, P.C.

- 1 2. Any and all agreements, correspondence, memoranda and/or documents addressing or reflecting
2 the hourly rate or rates at which time was or would be billed or setting forth the effective date
3 of any modification or other terms with respect to the agreed-upon services.
4 3. A composite of all attorneys' fees charged to SHV and Harper by all three law firms to date in
5 the above-encaptioned lawsuit.

6 DATED November 9, 2004.

7 FAVOUR, MOORE & WILHELMSSEN, P.A.

8
9 By 
10 David K. Wilhelmsen
11 Post Office Box 1391
12 Prescott, AZ 86302-1391
13 Attorneys for Simses

13 ORIGINAL AND ONE COPY OF the foregoing
14 Request for Production of Documents and Things
15 hand delivered this 10th day of November,
16 2004 to:

17 Messrs. Mark W. Drutz and
18 Grant K. McGregor
19 MUSGROVE, DRUTZ AND KACK, P.C.
20 Post Office Box 2720
21 Prescott, AZ 86302-2720

22 AND COPY mailed this date to:

23 Messrs. Robert E. Schmitt and
24 Dan A. Wilson
25 MURPHY, LUTEY, SCHMITT & FUCHS
26 Post Office Box 591
Prescott, AZ 86302-0591
Co-counsel for Defendants/Counterclaimants

By 

EXHIBIT 3

The Law Firm of

Favour Moore & Wilhelmsen, P.A.

David K. Wilhelmsen

1580 Plaza West Drive
Post Office Box 1391
Prescott, Arizona 86302

Telephone (928) 445-2444
Facsimile (928) 771-0450
DavidWilhelmsen@FMWlaw.net

August 2, 2005
File No. 10641.001

via Facsimile & U.S. Mail

Mark Drutz
MUSGROVE, DRUTZ & KACK, P.C.
Post Office Box 2720
Prescott, Arizona 86302-2720

Re: Cundiff, et al. v. Cox – Yavapai County Cause No. CV 2003-0399

Dear Mark:

In response to your letter this afternoon regarding our objection to your request for production, please note that the fact that you voluntarily consented to provide the information we set forth in a request for production of documents in the *Sims* matter and did not object to that request does not operate as an estoppel to our raising a legal objection to such a request by you in *this* case. Your logic of “tit for tat” has no legal support. On the other hand, we have provided you with legal support to our objection.

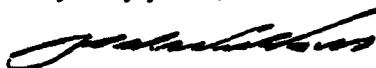
We will not and cannot stipulate to the hourly rates you charge, or your firm charges for Jeff Adams and Sharon Sargent-Flack. It is your responsibility, as part of your fee application, to demonstrate to the Court that you, Mr. Adams’ and Ms. Sargent-Flack’s hourly rate, and the number of hours your firm devoted to the case, are reasonable. Your burden in that regard does not depend upon what our firm charges our clients.

Although flattering that you would openly copy our request for production from an unrelated case, your request remains fatally flawed in that you have no legal support for your claim that the Court could not determine what the reasonable hourly rate for you, Mr. Adams or Ms. Sargent-Flack is based upon prevailing rates for similarly experienced attorneys in the *community*. Our request for production of documents in the *Sims* case does not act as a precedent in this case and does not

operate as some form of estoppel against our clients objecting to your request for production. The fact that your clients in the *Sims* case did not object, and you complied with our request for production in that litigation, does not bar our interposing a legally and factually founded basis for a protective order.

We trust that you are no longer "at a loss."

Very truly yours,



David K. Wilhelmsen
For the Firm

cc: Kenneth and Kathryn Page
John and Barbara Cundiff

HP LaserJet 3100
Printer/Fax/Copier/Scanner

ND CONFIRMATION REPORT for
Favour Moore & Wilhelmsen, P.A.
928 771 0450
Aug-2-05 15:05

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
153	8/ 2 15:04...	0'49"	928 445 5980	Send.....	3/ 3	EC144	Completed.....

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The Law Offices of
FAVOUR MOORE & WILHELMSSEN, P.A.
P. O. Box 1391
Prescott, AZ 86302
Telephone: (928) 445-2444
Telecopier: (928) 771-0450

FAX COVER SHEET

DATE: August 2, 2005

TO: Jeffrey Adams

FROM: David Wilhelmsen

FAX NO.: (928) 445-5980

PHONE: (928) 445-5935

RE: *Cundiff, et al v Cox*
File No. 10641.001

TOTAL PAGES TRANSMITTING (INCLUDING COVER SHEET): 3

SPECIAL INSTRUCTIONS:

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OPERATOR: Karen

If you have not properly received this telecopy, please call at (928) 445-2444.
Our telecopy number is (928) 771-0450.

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EXHIBIT 4

MUSGROVE, DRUTZ & KACK, P.C.
 ATTORNEYS AT LAW
 POST OFFICE BOX 2720, PRESCOTT, ARIZONA 86302-2720

JAMES B. MUSGROVE
 MARK W. DRUTZ
 THOMAS P. KACK
 GRANT K. MCGREGOR
 JOHN G. MULL
 JEFFREY R. ADAMS
 CATHY L. KNAPP
 SHARON SARGENT-FLACK

PRESCOTT OFFICE
 1135 IRON SPRINGS ROAD
 PRESCOTT, ARIZONA 86305

PRESCOTT VALLEY OFFICE
 3001 MAIN STREET, SUITE 2C
 PRESCOTT VALLEY, ARIZONA 86314

TELEPHONE
 (928) 445-5935
 (928) 445-5980 (FAX)

TELEPHONE
 (928) 775-9565
 (928) 775-9550 (FAX)

August 3, 2005

File No. 9449-1

VIA TELECOPIER - 771-0450

David K. Wilhelmsen, Esq.
 Favour, Moore & Wilhelmsen, P.A.
 1580 Plaza West Drive
 Post Office Box 1391
 Prescott, Arizona 86302-1391

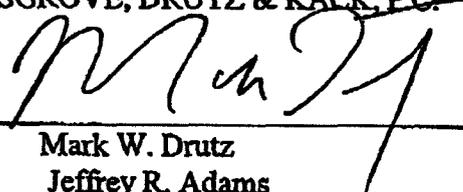
Re: Johr. B. Cundiff and Barbara C. Cundiff, et al. v. Donald Cox and Catherine Cox
 Yavapai County Superior Court Cause No. CV 2003-0399

Dear David:

I find it hard to believe that you served my office with a Request to Produce in Yavapai County Superior Court Case No. CV 2001-0123 which you believed had no merit. That would be a clear violation of Rule 11, Ariz. R. Civ. Proc. We believed that your Request to Produce in CV 2001-0123 sought documentation which was relevant to the attorneys' fees dispute and responded to that request accordingly. Since you are unwilling to stipulate to the reasonableness of our hourly rates and the time that we incurred in the above-entitled matter, it is our position that our Request to Produce in this action satisfies the standards of Rule 26, Ariz. R. Civ. Proc. If you continue to disagree, then I suppose you will have to file a Motion for Protective Order.

Sincerely,

MUSGROVE, DRUTZ & KACK, P.C.

By: 

Mark W. Drutz
 Jeffrey R. Adams

MWD/jw

cc: Mr. and Mrs. Donald Cox

The Law Firm of

Favour Moore & Wilhelmsen, P.A.

David K. Wilhelmsen

1580 Plaza West Drive
Post Office Box 1391
Prescott, Arizona 86302

Telephone (928) 445-2444
Facsimile (928) 771-0450
DavidWilhelmsen@FMWlaw.net

August 3, 2005
File No. 10641.001

via Facsimile & U.S. Mail

Mark Drutz
MUSGROVE, DRUTZ & KACK, P.C.
Post Office Box 2720
Prescott, Arizona 86302-2720

Re: Cundiff, et al. v. Cox – Yavapai County Cause No. CV 2003-0399

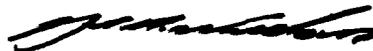
Dear Mark:

Clearly, in an effort to salvage your position you have read too much into our correspondence dated August 2, 2005. Obviously, we were not stating that our filing of a request for production in the *Sims* matter was without merit. To the contrary, under the facts of that case, there was a reasonable basis for our propounding the request for production of documents.

Again, your copying that request for production of documents and propounding the request in this case, in light of the facts and law, is unreasonable. You have offered no legally sound argument in support of your propounding the discovery. This is disconcerting and reveals that your position is without merit, and the discovery request was made for purposes of delay and harassment.

You state your unwillingness to withdraw the request for production, leaving us with no option but to file a motion for protective order. We will request our attorney's fees.

Very truly yours,



David K. Wilhelmsen
For the Firm

cc: Kenneth and Kathryn Page
John and Barbara Cundiff

HP LaserJet 3100
Printer/Fax/Copier/Scanner

SEND CONFIRMATION REPORT for
Favour Moore & Wilhelmsen, P.A.
928 771 0450
Aug-3-05 9:42

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
160	8/ 3 9:42 ..	0'39"	928 445 5980	Send.....	2/ 2	EC144	Completed.....

Total 0'39" Pages Sent: 2 Pages Printed: 0

The Law Offices of
FAVOUR MOORE & WILHELMSEN, P.A.
P. O. Box 1391
Prescott, AZ 86302
Telephone: (928) 445-2444
Telecopier: (928) 771-0450

FAX COVER SHEET

DATE: August 3, 2005
TO: Mark Drutz
FROM: David Wilhelmsen
FAX NO.: (928) 445-5980
PHONE: (928) 445-5935
RE: *Cundiff et al v. Cox*
File No. 10641.001

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August 4, 2005

File No. 9449-1

VIA TELECOPIER - 771-0450

David K. Wilhelmsen, Esq.
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Prescott, Arizona 86302-1391

Re: John B. Cundiff and Barbara C. Cundiff, et al. v. Donald Cox and Catherine Cox
Yavapai County Superior Court Cause No. CV 2003-0399

Dear David:

In an effort to avoid a discovery dispute regarding our Request for Production, we will modify our Request No. 3 which sought a composite of all attorneys' fees charged to Plaintiffs and/or Alfie Ware to date in the above-captioned lawsuit to request the total numbers of hours spent by each of the attorneys and paralegals in your firm in prosecuting this case.

Sincerely,

MUSGROVE, DRUTZ & KACK, P.C.

By: 

Mark W. Drutz
Jeffrey R. Adams

MWD/jw

cc: Mr. and Mrs. Donald Cox