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BY: \_\_\_\_\_

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9 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
10 IN AND FOR THE COUNTY OF YAVAPAI

11 JOHN B. CUNDIFF and BARBARA C.  
12 CUNDIFF, husband and wife; ELIZABETH  
13 NASH, a married woman dealing with her  
14 separate property; KENNETH PAGE and  
15 KATHRYN PAGE, as Trustee of the Kenneth  
16 Page and Catherine Page Trust,

17 Plaintiffs,

18 vs.

19 DONALD COX and CATHERINE COX,  
20 husband and wife,

21 Defendants.

CASE NO. P1300CV20030399

and

CASE NO. P1300CV20090822

**OBJECTION TO REQUEST  
FOR JUDICIAL RE-  
ASSIGNMENT**

**(Oral Argument Requested)**

22 JAMES L. VARILEK, Trustee, James L.  
23 Varilek Revocable Trust Dated November 16,  
24 1994,

25 Plaintiff,

vs.

ROBERT D. VERES, an unmarried man,

Defendant.

Plaintiffs, John Cundiff and Barbara Cundiff, Rebecca Nash, Kenneth Page and Kathryn Page, by and through their attorney undersigned, hereby object to James L. Varilek's Request for Judicial Reassignment for the reason that his action was improperly consolidated with the present case. Counsel for Veres filed his motion to consolidate with the judge to whom the higher number was assigned. Rule 4 of the Yavapai County Local Rules states, in pertinent part,

1 “[Motions] to consolidate shall be heard by the judge to whom the case with the lowest number  
2 is assigned unless otherwise assigned by the Presiding Judge”. Counsel for Varilek has been  
3 trying for some time now to disqualify this judge from these proceedings, including a special  
4 action, which was not accepted. This judge has been presiding over the lower numbered case for  
5 the past eight years and should not be disqualified from continuing to do so as a result of a party  
6 filing a separate suit while simultaneously aligning himself with the Plaintiffs.

7         Contrary to Varilek’s statement that the present case is critically different than the  
8 situation in *Huerta v. Nelson*, 222 Ariz. 44, 213 P.3d 193 (App. 2009), the court held in that  
9 special action that “a party whose case becomes consolidated with another may not thereafter  
10 exercise a peremptory change of judge pursuant to Arizona Rule of Civil Procedure (“Rule”)  
11 42(f)(1) if a party on the same “side” in the other case already has exercised a peremptory  
12 change of judge. *Id.* Varilek’s counsel, while representing all of the Plaintiffs in the lower  
13 numbered case, filed a Notice of Change of Judge on September 18, 2008. This judge denied  
14 that Notice on September 22, 2008 from which Varilek’s counsel filed a special action. The  
15 Court of Appeals accepted jurisdiction but denied relief. The undersigned substituted in as  
16 counsel for Plaintiffs in the lower numbered case and former counsel for Plaintiffs filed his  
17 Notice of Change of Judge on July 27, 2009 in the higher numbered case. Once the cases were  
18 erroneously consolidated, Varilek’s counsel filed his request to reassign the case to another  
19 judge.

20         Varilek’s counsel represents a party whose case has been consolidated with another and  
21 may not thereafter invoke the provisions of Rule 42(f) because he previously did so while  
22 representing a party on the same “side”. *Huerta*, above, at 44, 213 P.3d at 193. This Court  
23 should deny Varilek’s Request, vacate the consolidation order and suspend Mr. Varilek’s case  
24 until the lower numbered one is fully adjudicated.

1 DATED this 13<sup>th</sup> day of April, 2011.

2 **J. JEFFREY COUGHLIN PLLC**

3  
4 By: 

J. Jeffrey Coughlin

5 COPY of the foregoing  
6 mailed this 13<sup>th</sup> day of  
April, 2011 to:

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14 Dated September 22, 2010

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