

1 Jeffrey R. Adams, Esq. #018959  
2 THE ADAMS LAW FIRM, PLLC  
3 125 Grove Avenue  
4 P.O. Box 2522  
5 Prescott, Arizona 86302  
6 Tel: (928) 445-5935  
7 Fax: (928) 443-9230  
8 law\_office@jradamslaw.com  
9 Attorneys for Defendants

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

2012 JUN -1 PM 1:21 ✓

SANDRA K HARKHAM, CLERK  
BY: J. DEROIS

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

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  
Catherine Page Trust,

Plaintiffs,

v.

DONALD COX and CATHERINE COX,  
husband and wife, et al. et ux.,

Defendants.

P1300  
Case No. CV 2003-0399

Division No. 1

**DEFENDANTS' COX ET AL. PRETRIAL  
CONFERENCE MEMORANDUM IN  
ACCORDANCE WITH RULE 16(b), ARIZ.  
R. CIV. P.**

(Assigned to the Hon. Kenton Jones)

Defendants Cox et al., through their counsel undersigned, hereby submit the following Joint Pretrial Conference Memorandum pursuant to Rule 16(b), Ariz. R. Civ. P. The time frames which the parties have set forth in this memorandum are based upon the premise that the trial will occur at the earliest October 31, 2012. Should the actual trial date be set prior to or later than that anticipated date, it will be necessary to reevaluate the deadlines set forth herein. Regardless, as this Court is well aware, this case has been pending for a very long time and there is absolutely no good or justifiable reason this case should not be set for trial 13 months or more as proposed by Plaintiffs.

1 **1. Discovery**

2 The parties completed substantial discovery in this case already in anticipation of trial in  
3 August, 2005. However, Defendants do agree that some additional discovery will be necessary,  
4 which they already have begun and which will be completed in a very short amount of time. That  
5 discovery will includes updating the results obtained by Sheila Cahill, who conducted substantial  
6 research of the uses of the properties in the subdivision that is required because of changes that have  
7 occurred in the economy and changes in ownership. Ms. Cahill will very soon be finished with that  
8 work and Defendants will supplement their Rule 26.1 Disclosures accordingly. Defendants do not  
9 believe that there is a need to engage in a significant number of depositions although Plaintiffs have  
10 indicated a need to take depositions. Thus, at this time Defendants are unaware of any pending  
11 discovery disputes between the parties.  
12

13  
14  
15 In considering the foregoing, it should be noted that since this case returned to this Court  
16 from the Court of Appeals and Arizona Supreme Court and they finished with their joinder activities,  
17 Plaintiffs have performed no discovery of any kind, at least that is our impression in light of the fact  
18 that they have served not a single supplemental disclosure statement, requested not a single  
19 deposition nor served any additional discovery requests. Rather, it seems Plaintiffs are content to  
20 simply sit on their hands while the calendar days and months click by. They should not be rewarded  
21 by allowing this case to be set for trial more than a year from now. It is time for Plaintiffs to get off  
22 the pot. Therefore, we suggest cutting discovery off 90 days before trial.  
23  
24

25 / / /

26 / / /

27 / / /

1 **2. Expert Witnesses**

2 Expert witnesses shall be disclosed no later than 90 days before trial with rebuttal expert  
3 witnesses disclosed 60 days before trial.  
4

5 **3. Determination or Designation of Experts**

6 Defendants have designated Sheila Cahill as an expert witness. We expect that Plaintiffs will  
7 renew their objection to Ms. Cahill being called as an expert or even as a lay witness although we  
8 believe that this Court has resolved and disposed of that issue already and made a judicial  
9 determination that Ms. Cahill should be allowed to testify in this case. To date, Plaintiffs have  
10 neither designated nor disclosed an expert witness, which is curious in light of their statements to  
11 the Court of having an intention to do so. If they intend to use an expert, they should know already  
12 who that expert is inasmuch as they have literally had several years to do so. Thus, experts should  
13 be designated consistent with Section 2 above.  
14  
15

16 **4. Disclosure of Nonexpert Witnesses**

17 The parties have each disclosed a number of lay witnesses in their respective disclosure  
18 statements. However, following the joinder of all subdivision property owners, Defendants believe  
19 that additional witnesses will be identified and require disclosure. Defendants believe that non-  
20 expert witnesses will be disclosed no later than 75 days before trial.  
21  
22

23 **5. Discovery Disputes**

24 Defendants are unaware of any currently pending discovery disputes.

25 / / /

26 / / /

27 / / /

1 **6. Elimination of Unmeritorious Claims or Defenses**

2 Defendants believe all issues with respect to the merits of the claims and defenses asserted  
3 in this case have been resolved and that there is not, at present, a need to eliminate any claims or  
4 defenses.  
5

6 **7. Amendment of Pleadings**

7 Defendants do not believe that any amendment of the pleadings is necessary or forthcoming.  
8

9 **8. Identification of Issues of Fact**

10 The parties dispute whether the recorded Declaration of Restrictions has been  
11 abandoned/waived and is enforceable.  
12

13 **9. Stipulations re Foundation or Admissibility**

14 Defendants will agree that they will entertain and address any necessary stipulations by or  
15 before 20 days before trial.  
16

17 **10. Special Procedures**

18 No special procedures for management of this case are necessary.

19 **11. Alternative Dispute Resolution**

20 The parties already have participated in two mediations and a settlement conference, none of  
21 which were successful. Further, given the joinder of all subdivision property owners, Defendants  
22 believe that there are significant practical and legal barriers to the likelihood of success of any  
23 mediation or settlement conference.  
24

25 **12. Modification/Suspension of Any Rules**

26 The parties do not believe this is necessary.  
27

28 / / /

1 **13. Rule 26.1 Compliance**

2 See paragraph 1 above. Defendants will agree to full compliance with Rule 26.1, Ariz. R. Civ.  
3 P., will have been made by the discovery cut-off, which Defendants agree should be 90 days prior to  
4 trial.  
5

6 **14. Settlement Conference**

7 See paragraph 11 above.  
8

9 **15. Joint Pretrial Statement**

10 Defendants believe that the parties should file a Joint Pretrial Statement should be filed within  
11 ten (10) days of trial.  
12

13 **16. Trial Date**

14 Defendants believe a trial date on or after October 31, 2012, would be reasonable.

15 **17. Motions in Limine/Dispositive Motions**

16 Defendants believe that any motions *in limine*, if necessary, should be filed no later than 20  
17 days before trial. Dispositive motions should be filed no later than 90 days prior to trial.  
18

19 **18. Jury Trial**

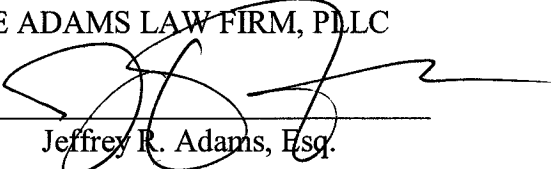
20 Defendants have requested a jury trial.

21 Setting a trial date not later than October 31, 2012, will accommodate all of the foregoing cut-  
22 off dates. Again, given the length of time this case has been pending just since it returned from the  
23 Court of Appeals and Arizona Supreme Court, Plaintiffs have had more than an adequate amount of  
24 time to prepare their case for trial and to conduct any discovery they deem necessary. All of the  
25 original parties to this case have been deposed, significant written discovery requests have already  
26 been exchanged and responded to and a multitude of issues have been resolved through dispositive  
27  
28

1 motions. Accordingly, no prejudice will be suffered by the setting of a trial not later than October 31,  
2 2012.

3  
4 DATED this 1 day of June, 2012

5 THE ADAMS LAW FIRM, PLLC

6 By:   
7 Jeffrey R. Adams, Esq.

8 COPY of the foregoing hand-delivered  
9 this 1 day of June, 2012, to:

10 J. Jeffrey Coughlin, Esq.  
11 J. Jeffrey Coughlin PLLC  
12 114 S. Pleasant St.  
13 Prescott, Arizona 86303  
Attorney for Plaintiffs

14 David K. Wilhelmsen  
15 Maguerite Kirk  
16 Favour Moore & Wilhelmsen, PLC  
17 P.O. Box 1391  
18 Prescott, Arizona  
19 Attorneys for James Verilek

20 Mark W. Drutz  
21 Sharon Sargent-Flack  
22 Musgrove, Drutz & Kack, P.C.  
23 P.O. Box 2720  
24 Prescott, Arizona 86302  
25 Attorneys for Robert Veres

26 COPY of the foregoing mailed  
27 this 1 day of June, 2012, to:

28 William "Bill" Jensen  
2428 W. Colorado Avenue  
Flagstaff, Arizona 86001  
Pro Per

1 Hans Clugston  
2 Hans Clugston, PLLC  
3 1042 Willow Creek Road, Suite A101-PMB502  
4 Prescott, Arizona 86301  
5 Attorney for Margaret Kizlowski & Northern Az. Fiduciaries, Inc.  
6  
7 Karen L. Wargo  
8 Michael P. Wargo  
9 9200 E. Spurr Lane  
10 Prescott Valley, Arizona 86315  
11 Pro Per  
12  
13 Linda J. Hahn  
14 10367 W. Mohawk Lane  
15 Peoria, Arizona 85382  
16 Pro Per  
17  
18 Noel J. Hebets, Esq.  
19 Noel J. Hebets, PLC  
20 127 E. 14<sup>th</sup> Street  
21 Tempe, Arizona 85281  
22 Attorney for William M. Grace  
23  
24 Robert E. Schmitt, Esq.  
25 Murphy, Schmitt, Hathaway & Wilson, PLLC  
26 P.O. Box 591  
27 Prescott, Arizona 86302  
28 Attorneys for Robert H. Taylor & Terri A. Thomson-Taylor  
29  
30 John & Rebecca Feddeman  
31 9550 E. Spurr Lane  
32 Prescott Valley, Arizona 86315  
33 Pro Per  
34  
35 Gary & Sabra Feddema  
36 9601 Far Away Place  
37 Prescott Valley, Arizona 86315  
38 Pro Per  
39  
40 Sergio Martinez & Susana Navarro  
41 10150 N. Lawrence Lane  
42 Prescott Valley, Arizona 86315  
43 Pro Per

1 William R. & Judith K. Stegeman Trust  
2 9200 E. Far Away Place  
3 Prescott Valley, Arizona 86315  
4 Pro Per

4 Rynda & Jimmy Hoffman  
5 9650 E. Spurr Lane  
6 Prescott Valley, Arizona 86315  
7 Pro Per

7 William & Shaunla Heckethorn  
8 9715 E. Far Away Place  
9 Prescott Valley, Arizona 86315  
10 Pro Per

10 Leo & Marilyn Murphy  
11 9366 E. Turtlerock Rd.  
12 Prescott Valley, Arizona 86315  
13 Pro Per

13 James & Leslie Richie  
14 9800 E. Plum Creek Way  
15 Prescott Valley, Arizona 86315  
16 Pro Per

16 Rhonda Folsom  
17 9305 N. Coyote Springs Rd.  
18 Prescott Valley, Arizona 86315  
19 Pro Per

19 Kenneth Paloutzian  
20 8200 Long Mesa Drive  
21 Prescott Valley, Arizona 86315  
22 Pro Per

22 Bonnie Rosson  
23 8950 E. Plum Creek Way  
24 Prescott Valley, Arizona 86315  
25 Pro Per

25 Robert Lee & Patti Ann Stack/  
26 Robert Lee & Patti Ann Stack Trust  
27 10375 Lawrence Lane  
28 Prescott Valley, Arizona 86315  
Pro Per



1 John & Dusti Audsley  
2 10500 N. Orion Way  
3 Prescott Valley, Arizona 86315  
4 Pro Per

5 Dane E. & Sherrilyn G. Tapp  
6 8595 E. Easy Street  
7 Prescott Valley, Arizona 86315  
8 Pro Per

9 Richard & Beverly Strissel  
10 9350 E. Slash Arrow Drive  
11 Prescott Valley, Arizona 86314  
12 Pro Per

13 Mike and Julia Davis  
14 9147 E. Morning Star Road  
15 Prescott Valley, Arizona 86315  
16 Pro Per

17 Richard & Pinney  
18 10980 N. Coyote Springs Rd.  
19 Prescott Valley, Arizona 86315  
20 Pro Per

21 BY  \_\_\_\_\_

22  
23  
24  
25  
26  
27  
28