

2004 SEP 28 PM 3: 48

JEANNE HICKS, CLERK

BY: S. Murphy

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

4 Attorneys for Plaintiffs

5 **IN THE SUPERIOR COURT OF ARIZONA**

6 **COUNTY OF YAVAPAI**

7
8 **JOHN B. CUNDIFF and BARBARA C.)**
9 **CUNDIFF, husband and wife; BECKY NASH,)**
10 **a married woman dealing with her separate)**
11 **property; KENNETH PAGE and KATHRYN)**
PAGE, as Trustee of the Kenneth Page and)
Kathryn Page Trust,)

12 Plaintiffs,

13 vs.

14 **DONALD COX and CATHERINE COX,)**
15 **husband and wife,)**

16 Defendants.)

Case No. CV 2003-0399

Division 1

**PLAINTIFFS' COUNSEL'S
CERTIFICATION PURSUANT TO
RULE 37(a)(2)(C)
IN SUPPORT OF PLAINTIFFS'
MOTION TO COMPEL**

17 Plaintiffs, John and Barbara Cundiff, Becky Nash, and, Kenneth and Katheryn Page, by and
18 through undersigned counsel, hereby certifies in accordance with Rule 37(a)(2)(C), Ariz.R.Civ.Proc.,
19 that undersigned counsel has attempted to resolve the instant discovery dispute in good faith with
20 Defendants' counsel concerning Plaintiffs' request for production of Defendants' tax returns.
21 Undersigned counsel contacted Defendants' counsel in writing on August 31 and September 9, 2004,
22 for his client's response to the request for production, but Defendants' counsel failed to respond in any
23 manner. *See, Correspondence from Plaintiffs' counsel to Defendants' counsel, August 31 and*
24 *September 9, 2004 (true and correct copies attached hereto and by this reference incorporated herein*
25 *as Exhibits "1" and "2").* Therefore, Plaintiffs request that this Court consider and schedule oral
26 argument on Plaintiffs' motion to compel.

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RESPECTFULLY SUBMITTED this 28th day of September, 2004.

FAVOUR MOORE & WILHELMSSEN, P.A.

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

Original of the foregoing
filed this 28th day of September, 2004
with:

Clerk, Superior Court of Arizona
Yavapai County
Prescott, Arizona

A copy hand-delivered this 28th day
of September, 2004 to:

Honorable David L. Mackey
Division One
Superior Court of Arizona
Yavapai County
Prescott, Arizona

and, a copy hand-delivered this
28th day of September, 2004 to:

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

By: Marguerite Kirk
Marguerite Kirk

The Law Firm of

Favour Moore & Wilhelmsen, P.A.

Marguerite Kirk

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

Telephone (928) 445-2444
Facsimile (928) 771-0450
MargueriteKirk@cableone.net

August 31, 2004
File No. 10641.001

via Facsimile & U.S. Mail

Jeffrey Adams
MUSGROVE, DRUTZ & KACK, P.C.
1135 Iron Springs Road
Prescott, Arizona 86305

*Re: Cundiff, et al. v. Cox – Yavapai County Cause No. CV 2003-0399
Defendants' Response to Request for Production of Documents*

Dear Jeff:

On behalf of your clients', you objected to our request for copies of Defendants' tax returns, including schedules, from 1998 to present. *Request for Production No. 3*. Catherine Cox testified that she, her husband, and her sons have a "partnership" concerning their nursery operations, including the nursery enterprise located in Coyote Springs Ranch. Your clients' tax returns, as well as partnership returns for those years, are therefore highly relevant to their defense that they are not operating a "business" on the subject property. Clearly, it is impossible to obtain information from any other source as to how your clients treat their partnership assets for tax purposes, as returns are filed under penalty of perjury. Additionally, these tax returns – both individual and partnership returns – will provide relevant information regarding the partnership assets, its volume of business, and the like.

Therefore, please provide your clients' individual and partnership tax returns for the years 1998 to present in accordance with the request for production.

Very truly yours,


Marguerite Kirk
For the Firm

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
914	8/31 16:10....	0'27"	928 445 5980	Send.....	1 / 1	EC144	Completed.....

Total 0'27" Pages Sent: 1 Pages Printed: 0

The Law Firm of

Favour Moore & Wilhelmsen, P.A.

Marguerite Kirk

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

Telephone (928) 445-2444
Facsimile (928) 771-0450
Marguerite.Kirk@cablhost.net

August 31, 2004
File No. 10641.901

via Facsimile & U.S. Mail

Jeffrey Adams
MUSGROVE, DRUTZ & KACK, P.C.
1135 Iron Springs Road
Pruscott, Arizona 86305

Re *Cundiff, et al. v. Cox - Yavapai County Cause No. CV 2003-0399*
Defendants' Response to Request for Production of Documents

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Therefore, please provide your clients' individual and partnership tax returns for the years 1998 to present in accordance with the request for production.

Very truly yours,


Marguerite Kirk
For the Firm

The Law Firm of

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

Telephone (928) 445-2444
Facsimile (928) 771-0450
MargueriteKirk@cableone.net

September 9, 2004
File No. 10641.001

Jeffrey Adams
MUSGROVE, DRUTZ & KACK, P.C.
1135 Iron Springs Road
Prescott, Arizona 86305

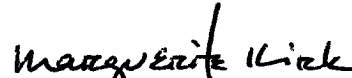
*Re: Cundiff, et al. v. Cox – Yavapai County Cause No. CV 2003-0399
Defendants' Response to Request for Production of Documents*

Dear Jeff:

This correspondence is to follow-up on our August 31, 2004 letter to you regarding your clients' refusal to produce requested tax returns in response to our request for production propounded on July 1, 2004 based upon your clients' deposition testimony.

To date, you have not responded to our August 31, 2004 correspondence. Kindly produce those documents as stated in our request for production of documents by September 20, 2004. If your clients refuse to disclose the requested tax returns, we will have no option but to file a motion to compel.

Very truly yours,


Marguerite Kirk
For the Firm

MK

cc: Kenneth and Kathryn Page
John and Barbara Cundiff
Becky Nash

1 Original of the foregoing
filed this 28th day of September, 2004
2 with:

3 Clerk, Superior Court of Arizona
Yavapai County
4 Prescott, Arizona

5 A copy hand-delivered this 28th day
of September, 2004 to:

6 Honorable David L. Mackey
7 Division One
Superior Court of Arizona
8 Yavapai County
Prescott, Arizona

9
10 and, a copy hand-delivered this
28th day of September, 2004 to:

11 Mark Drutz
Jeffrey Adams
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1135 Iron Springs Road
13 Prescott, Arizona 86302
Attorneys for Defendants Cox
14

15 By: Marguerite Kirk
16 Marguerite Kirk

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