

1 Mark W. Drutz, # 006772
2 Jeffrey R. Adams, #018959
3 Sharon Sargent-Flack, #021590
4 **MUSGROVE, DRUTZ & KACK, P.C.**
5 1135 Iron Springs Road
6 Prescott, Arizona 86305
7 (928) 445-5935

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2005 AUG 23 PM 4: 18

JEANNIE HIGGS, CLERK

BY: W. Button

6 Attorneys for Defendants

7 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF YAVAPAI**

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

16 Plaintiffs,

17 v.

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

20 Defendants.

Case No. CV 2003-0399

Division No. 1

**CERTIFICATION PURSUANT TO
RULE 37(c)**

21 Undersigned counsel, pursuant to Rule 37(c), Ariz. R. Civ. P., hereby provides this separate
22 statement which certifies that after personal consultation and good faith efforts with Plaintiffs'
23 counsel, he has been unable to satisfactorily resolve the subject discovery dispute. Mr. Alfie Ware
24 was personally served with a Subpoena Duces Tecum on August 3, 2005, a true and correct copy of
25 which is attached as Exhibit "1". Undersigned counsel caused a copy to be mailed to Plaintiffs on
26 the same date. (Exhibit "1"). All parties were provided notice of the Subpoena Duces Tecum. (Id.).
27 On August 1, 2005, undersigned counsel propounded Coxes' Request for Production on Plaintiffs.
28

✓ Div 1

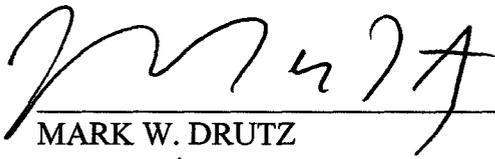
1 (Exhibit "2"). Undersigned counsel has conferred in good faith, in written correspondence to
2 Plaintiffs' counsel in an effort to resolve the discovery dispute including modifying the Request for
3 Production. (See correspondence dated August 2, 3, and 4, attached as Exhibits "3" - "7").
4

5
6 
7 MARK W. DRUTZ

8 STATE OF ARIZONA)
9) ss.
County of Yavapai)

10 MARK W. DRUTZ, being first duly sworn upon his oath, deposes and says:

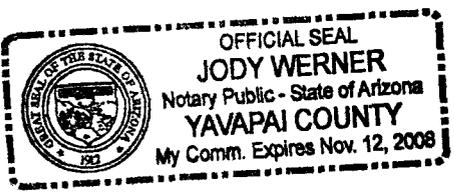
11 That he is the attorney for Defendants in the above-entitled matter; that he has read the
12 foregoing *Response in Opposition to Plaintiffs' Motion for Protective Order and Motion to Quash*
13 *Subpoena Duces Tecum Served by Defendants on Non-Party Alfie Ware; and Motion to Compel*
14 *Production of Documents*, and is informed and/or knows the contents thereof; that the same are true
and correct, except those matters stated upon information and belief, and as to those, he believes
them to be true.

15
16 
17 MARK W. DRUTZ

18 SUBSCRIBED AND SWORN TO before me this 23rd day of August 2005, by MARK W.
19 DRUTZ.

20 
21 NOTARY PUBLIC

22 My Commission Expires:
Nov. 12, 2008



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 HAND DELIVERY

Mr. Alfie Ware
7850 East Florentine Road
Prescott Valley, Arizona 86314

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 Mr. Ware:

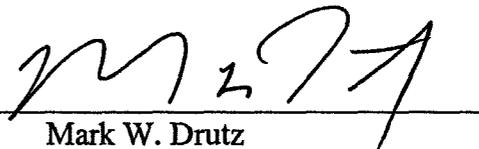
Our office represents Defendants Donald and Catherine Cox with respect to the above-referenced matter. Enclosed is a Subpoena Duces Tecum seeking documents pertaining to the above-referenced lawsuit which are described in the Subpoena. The subpoena does not command you to give testimony. Rather, it seeks the production of certain documents. Please produce the documents on or before August 22, 2005.

Enclosed is a witness fee check in the amount of \$12.00. In the event your copying charges exceed \$12.00, please advise and we will forward the difference to you.

Please note that the date set forth for compliance with the Subpoena is August 22, 2005 at 9:00 a.m. Thank you for your assistance in this matter.

Sincerely,

MUSGROVE, DRUTZ & KACK, P.C.

By: 

Mark W. Drutz
Jeffrey R. Adams

MWD/jw
Enclosures

cc: David K. Wilhelmsen, Esq.
Donald and Catherine Cox

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER. SEE REVERSE SIDE FOR COMPLETE SECURITY FEATURES.

MUSGROVE, DRUTZ & KACK, P.C.
GENERAL ACCOUNT
1135 IRON SPRINGS ROAD
PRESCOTT, AZ 86305
(928) 445-5935



Prescott Branch
221 North Cortez
Prescott, AZ 86301

31159

91-504/1221

PAY **** TWELVE & 0/100 DOLLARS

DATE 08/02/05 \$ AMOUNT **12.00

TO THE ORDER OF ALFIE WARE

Bridgette M. Noyes
SECURITY

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE. RED IMAGE DISAPPEARS WITH HEAT.

⑈031159⑈ ⑆122105045⑆ 1101004321⑈

MUSGROVE, DRUTZ & KACK, P.C. General Account

31159

Vendor ID:

Name: ALFIE WARE
Check Date: 08/02/05
Check Amount: 12.00

MEMO:

Cox 9449-1/MWD
Witness Fee

1 Mark W. Drutz, # 006772
2 Jeffrey R. Adams, #018959
3 Sharon Sargent-Flack, #021590
4 **MUSGROVE, DRUTZ & KACK, P.C.**
5 1135 Iron Springs Road
6 Prescott, Arizona 86305
7 (928) 445-5935

8 Attorneys for Defendants

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; BECKY**
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 **v.**

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

21 **Defendants.**

Case No. CV 2003-0399

Division No. 1

SUBPOENA DUCES TECUM

22 **THE STATE OF ARIZONA TO:**

23 **ALFIE WARE**
24 **7850 East Florentine Road**
25 **Prescott Valley, Arizona 86314**

26 **YOU ARE COMMANDED**, pursuant to the provisions of Rule 45, Arizona Rules of Civil
27 Procedure, to produce or permit inspection and copying of the designated books, documents or
tangible things described in this Subpoena:

APPEARANCE MADE BEFORE:

Certified Court Reporter

DATE AND TIME OF APPEARANCE:

August 22, 2005 at 9:00 a.m.
(NO APPEARANCE NECESSARY)

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PLACE OF APPEARANCE: Musgrove, Drutz & Kack, P.C.
1135 Iron Springs Road
Prescott, Arizona 86305

You are commanded to bring with you and produce these books, papers, documents or tangible things described below:

Any and all documentation, correspondence, books, records, cancelled checks, bank statements, hand-written notes, contracts or other written memoranda of any kind in your possession related, in any way, to an agreement with the Plaintiffs and/or Plaintiffs' attorneys (the law firm Favour, Moore & Wilhelmsen) for the payment of Plaintiffs' attorneys' fees and costs in connection with the above-captioned matter.

ANY FAILURE TO OBEY THIS SUBPOENA WITHOUT ADEQUATE EXCUSE MAY BE DEEMED A CONTEMPT OF COURT, AND A CIVIL ARREST WARRANT MAY BE ISSUED.

*****THIS SUBPOENA DUCES TECUM MAY BE COMPLIED WITH BY MERELY HAND DELIVERING OR SENDING VIA CERTIFIED MAIL THE RECORDS TO MUSGROVE, DRUTZ & KACK, P.C., IN PRESCOTT, ARIZONA BY THE DATE INDICATED ABOVE. IF, HOWEVER, YOU CHOOSE TO APPEAR IN PERSON, PLEASE TELEPHONE OUR OFFICE TO CONFIRM.*****

Requests for reasonable accommodation for persons with disabilities must be made to the division assigned to the case by parties at least three judicial days in advance of a scheduled court proceeding.

You have been subpoenaed by Defendants whose attorney's name, address and telephone number is:

Mark W. Drutz, Esq.
Jeffrey R. Adams, Esq.
Sharon Sargent-Flack, Esq.
Musgrove, Drutz & Kack, P.C.
1135 Iron Springs Road
P.O. Box 2720
Prescott, Arizona 86302
(928) 445-5935

YOUR DUTIES IN RESPONDING TO THIS SUBPOENA

You have the duty to produce the documents requested as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in this subpoena. See Rule 45(d)(1), Arizona Rules of Civil Procedure.

1 If this subpoena asks you to produce and permit inspection and copying of the designated
2 books, papers, documents, tangible things, or the inspection of the premises, you need not appear
3 to produce the items unless the subpoena states that you must appear for a deposition, hearing or
trial. See Rule 45(c)(2)(A), Arizona Rules of Civil Procedure.

4 **YOUR RIGHT TO OBJECT**

5 The party or attorney serving the subpoena has a duty to take reasonable steps to avoid
6 imposing an undue burden or expense on you. The Superior Court enforces this duty and may
7 impose sanctions upon the party or attorney serving the subpoena if this duty is breached. See Rule
45(c)(1), Arizona Rules of Civil Procedure.

8 You may object to this subpoena if you feel that you should not be required to respond to the
9 request(s) made. Any objection to this subpoena must be made within 14 days after it is served upon
10 you, or before the time specified for compliance, by providing a written objection to the party or
attorney serving the subpoena. See Rule 45(c)(2)(B), Arizona Rules of Civil Procedure.

11 If you object because you claim the information requested is privileged or subject to
12 protection as trial preparation material, you must express the objection clearly, and support each
13 objection with a description of the nature of this document, communication or item not produced so
14 that the demanding party can contest the claim. See Rule 45(d)(2), Arizona Rules of Civil
Procedure.

15 If you object to the subpoena in writing you do not need to comply with the subpoena until
16 a court orders you to do so. It will be up to the party or attorney serving the subpoena to seek an
17 order from the court to compel you to provide the documents or inspection requested, after providing
notice to you. See Rule 45(c)(2)(B), Arizona Rules of Civil Procedure.

18 If you are not a party to the litigation, or an officer of a party, the court will issue an order to
19 protect you from any significant expense result from the inspection and copying commanded. See
Rule 45(c)(2)(B), Arizona Rules of Civil Procedure.

20 You may also file a motion in the Superior Court of the county in which the case is pending
21 to quash or modify the subpoena if the subpoena:

22 (i) does not provide a reasonable time for compliance;

23 (ii) requires a non-party or officer of a party to travel to a county different from the county
24 where the person resides or does business in person; or to travel to a county different from where the
25 subpoena was served; or to travel to a place farther than 40 miles from the place of service; or to
26 travel to a place different from any other convenient place fixed by an order of a court, except that
a subpoena for you to appear and testify at trial can command you to travel from any place within
the state;

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(iii) requires the disclosure of privileged or protected information and no waiver or exception applies; or

(iv) subjects you to an undue burden. See Rule 45(c)(3)(A), Arizona Rules of Civil Procedure.

If this subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial trade information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party or an officer of a party to incur substantial travel expense;

The court may either quash or modify the subpoena, or the court may order you to appear or produce documents only upon specified conditions, if the party who served the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that you will be reasonably compensated. See Rule 45(c)(3)(B), Arizona Rules of Civil Procedure.

YOU ARE NOTIFIED THAT ANY FAILURE TO OBEY THIS SUBPOENA WITHOUT ADEQUATE EXCUSE MAY BE DEEMED A CONTEMPT OF THIS COURT, AND A CIVIL ARREST WARRANT MAY BE ISSUED. A CIVIL ARREST IS AN ORDER DIRECTING ANY POLICE OFFICER IN ARIZONA TO ARREST YOU AND BRING YOU BEFORE THIS COURT FOR FUTURE PROCEEDINGS.

AUG 2 2005

SIGNED AND SEALED this date: _____

Clerk of the Superior Court
JEANNE HICKS

By _____
Deputy Clerk

COURT SEAL

1 Mark W. Drutz, # 006772
2 Jeffrey R. Adams, #018959
3 Sharon Sargent-Flack, #021590
4 **MUSGROVE, DRUTZ & KACK, P.C.**
5 1135 Iron Springs Road
6 Prescott, Arizona 86305
7 (928) 445-5935

8 *Attorneys for Defendants*

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; BECKY**
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 **v.**
19 **DONALD COX and CATHERINE COX,**
20 **husband and wife,**
21 **Defendants.**

Case No. CV 2003-0399
Division No. 1

REQUEST FOR PRODUCTION OF DOCUMENTS

22 **TO: PLAINTIFFS JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife;**
23 **BECKY NASH, a married woman dealing with her separate property; KENNETH**
24 **PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page**
25 **Trust, and their attorneys of record, David K. Wilhelmsen of Favour, Moore &**
26 **Wilhelmsen, P.A.**
27 **Defendants Donald Cox and Catherine Cox (“Defendants”), pursuant to Rule 34, Arizona**
28 **Rules of Civil Procedure, request that the above-named Plaintiffs produce for Defendants’ inspection**
and copying at the offices of Musgrove, Drutz & Kack, P.C., 1135 Iron Springs Road, Prescott,
Arizona 86305 on or before September 10, 2005 the document and things as described herein.

1 INSTRUCTIONS FOR USE

2 1. In producing the documents designated below, you are requested to furnish all
3 documents known or available to you, regardless of whether a document is currently in your
4 possession, custody or control or that of your attorneys, employees, agents, investigators or other
5 representatives or is otherwise available to you.

6 2. If, for any reason, you are unable to produce in full any document requested:

7 a. Produce each such document to the fullest extent possible;

8 b. Specify the reasons for your inability to produce the remainder; and

9 c. State in detail whatever information, knowledge or belief you have concerning
10 the whereabouts and substance of each document not produced in full.

11 3. If any document requested was at one time in existence but is no longer in existence,
12 please state for each document as to which that is the case:

13 a. The type of document;

14 b. The types of information contained therein;

15 c. The date upon which it ceased to exist;

16 d. The circumstances under which it ceased to exist;

17 e. The identity of all persons having knowledge of the circumstances under
18 which it ceased to exist; and

19 f. The identity of all persons having knowledge or who had knowledge of the
20 contents thereof.
21

22 4. For each document requested which you are unable to produce and which was at any
23 time within your possession, custody or control or to which you had access at any time, specify in
24 detail:

25 a. The nature of the document (i.e., letter, memorandum, etc.);

26 b. The author of the document;

27 c. All recipients of the documents and any copy thereof;
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d. A summary of the information contained in the document;

e. The date on which you lost, relinquished or otherwise ceased to have possession, custody, control of or access to the document;

f. Identify all persons having knowledge of the circumstances whereby you lost, relinquished or otherwise ceased to have possession, custody or control of or access to the document; and

g. Identify all persons who have or have had knowledge of the contents of the document in full or in part.

5. In the event you seek to withhold or do withhold any document, in whole or in part, on the basis that it is not subject to discovery, produce a list of all such documents and, as to each such document, state:

a. The name of each author, writer, sender or initiator of each document.

b. The name of each recipient, addressee or party to whom such document was sent or intended to be sent;

c. The name of each and every person who received a copy of the document;

d. The date of the document or, if no date appears on the document, the date the document was prepared;

e. The title of the document, or if it has not title, then such other description of the document and its subject matter as shall be sufficient to identify the document; and

f. The grounds claimed for withholding the document from discovery (e.g., attorney-client privilege, work product, or any other grounds) and the factual basis for such a claim.

6. In accordance with Rule 34(b), Arizona Rules of Civil Procedure, as to each document produced, you are requested to 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 Rule 33, Arizona Rules of Civil Procedure, 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 no

1 in your possession or available to you on the date you first produce documents pursuant to this
2 request.

3 DEFINITIONS

4 1. "Plaintiffs", "you" and "your" means the plaintiffs in the above-captioned matter and
5 the past and present employees, representatives, agents and attorneys for plaintiffs.

6 2. "Any", "each" and "all" shall be read to be all inclusive and to require the production
7 of each and every document (as hereinafter defined) responsive to the particular request for
8 production in which such term appears.

9 3. "And" and "or" and any other conjunctions or disjunctions used herein shall be read
10 both conjunctively and disjunctively so as to require the production of all documents (as hereinafter
11 defined) responsive to all or any part of each particular request for production in which any
12 conjunction or disjunction appears.

13 4. "Person" means an individual, firm, corporation, association, organization or any
14 other entity.

15 5. The term "document" includes all electronic media or other tangible forms in which
16 information is stored and includes all written or graphic matter of every kind and description,
17 however produced or reproduced, WHETHER DRAFT OR FINAL, original or reproduction,
18 including, but not limited to, letters, correspondence, memoranda, notes, films, transcripts, contracts,
19 agreements, licenses, memoranda of telephone conversations or personal conversations, microfilm,
20 telegrams, books, newspaper articles, magazines, advertisements, periodicals, bulletins, circulars,
21 pamphlets, statements, notices, reports, rules, regulations, directives, teletype messages, minutes of
22 meetings, interoffice communications, reports, financial statements, ledgers, books of account,
23 proposals, prospectuses, offers, orders, receipts, working papers, desk calendars, appointment books,
24 diaries, time sheets, logs, movies, tapes for visual or audio reproduction, recordings or materials
25 similar to any of the foregoing, however denominated, and including writings, drawings, graphs,
26 charts, photographs, data processing results, printouts and computations (both in existence and stored
27 in memory components), and other compilations from which information can be obtained or
28 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.

1 DOCUMENTS TO BE PRODUCED

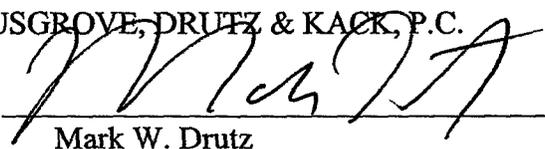
2 1. Each and every agreement, memorandum of understanding, document and/or
3 correspondence reflecting any written fee agreement (including any flat-fee reduction agreement)
4 by and between the Plaintiffs and/or Alfie Ware and the law firm of Favour, Moore & Wilhelmsen
5 pertaining to Yavapai County Superior Court Cause No. CV 2003-0399 (the above-captioned
6 lawsuit).

7
8
9 2. Any and all agreements, correspondence, memoranda and/or documents addressing
10 or reflecting the hourly rate or rates at which time was or would be billed or setting forth the
11 effective date of any modification or other terms with respect to the agreed-upon services.

12
13 3. A composite of all attorneys' fees charged to Plaintiffs and/or Alfie Ware to date in
14 the above-captioned lawsuit.

15 DATED this 1st day of August, 2005.

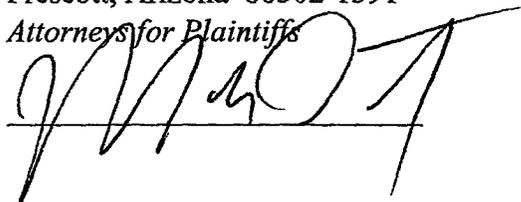
16 MUSGROVE, DRUTZ & KACK, P.C.

17 By 
18 _____

19 Mark W. Drutz
20 Jeffrey R. Adams
21 Sharon Sargent-Flack
22 *Attorneys for Defendants*

23 ORIGINAL of the foregoing hand-delivered
24 this 1st day of August, 2005 to:

25 David K. Wilhelmsen, Esq.
26 Marguerite M. Kirk, Esq.
27 Favour, Moore & Wilhelmsen, P.A.
28 1580 Plaza West Drive
Post Office Box 1391
Prescott, Arizona 86302-1391
Attorneys for Plaintiffs



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

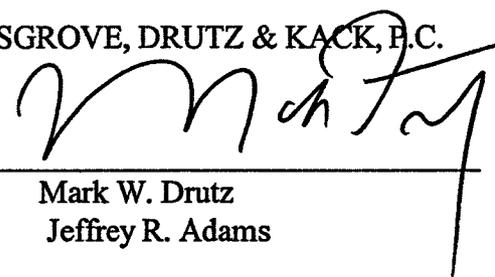
Dear David:

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.
Post Office Box 1391
2 Prescott, AZ 86302-1391
928/445-2444
3 David K. Wilhelmsen, 007112

4 Attorneys for Plaintiffs/Counterdefendants

5 SUPERIOR COURT OF ARIZONA

6 COUNTY OF YAVAPAI

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

8 Plaintiffs,)
9)

10 vs.)

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

15 Defendants.)
16 _____)

17 SEDONA HIDDEN VALLEY LIMITED)
PARTNERSHIP, an Arizona Limited)
18 Partnership; and HAROLD E. GRIES as)
Trustee of the Harper Family Trust dated)
December 30, 1982,)
19)

20 Counterclaimants,)
21 vs.)

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

23 Counterdefendants.)
24 _____)

25 ---

26 ---

No. CV 820010123

Division 6

**REQUEST FOR PRODUCTION OF
DOCUMENTS AND THINGS**

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

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

10 INSTRUCTIONS FOR USE

- 11 1. In producing the documents designated below, you are requested to furnish all documents
12 known or available to you, regardless of whether a document is currently in your possession,
13 custody or control or that of your attorneys, employees, agents, investigators or other
14 representatives or is otherwise available to you.
- 15 2. If, for any reason, you are unable to produce in full any document requested:
 - 16 a. Produce each such document to the fullest extent possible;
 - 17 b. Specify the reasons for your inability to produce the remainder; and
 - 18 c. State in detail whatever information, knowledge or belief you have concerning the
19 whereabouts and substance of each document not produced in full.
- 20 3. If any document requested was at one time in existence but is no longer in existence, please state
21 for each document as to which that is the case:
 - 22 a. The type of document;
 - 23 b. The types of information contained therein;
 - 24 c. The date upon which it ceased to exist;
 - 25 d. The circumstances under which it ceased to exist;
 - 26 e. The identity of all persons having knowledge of the circumstances under which it ceased
to exist; and
 - 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 5. In the event you seek to withhold or do withhold any document, in whole or in part, on the basis
- 11 that it is not subject to discovery, produce a list of all such documents and, as to each such
- 12 document, state:
- 13 a. The name of each author, writer, sender or initiator of each document;
- 14 b. The name of each recipient, addressee or party to whom such document was sent or
- 15 intended to be sent;
- 16 c. The name of each and every person who received a copy of the document;
- 17 d. The date of the document or, if no date appears on the document, the date the document
- 18 was prepared;
- 19 e. The title of the document, or if it has no title, then such other description of the
- 20 document and its subject matter as shall be sufficient to identify the document; and
- 21 f. The grounds claimed for withholding the document from discovery (e.g., attorney-client
- 22 privilege, work product, or any other grounds) and the factual basis for such a claim.
- 23 6. In accordance with ARIZ. R. CIV. P. 34(b), as to each document produced, you are requested to
- 24 designate the paragraph and subparagraph of this request to which each such document is
- 25 responsive.
- 26 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

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.
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.
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.
4. "Person" means an individual, firm, corporation, association, organization or any other entity.
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.

ITEMS REQUESTED

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:

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

21 AND COPY mailed this date to:

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

By 

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

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
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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

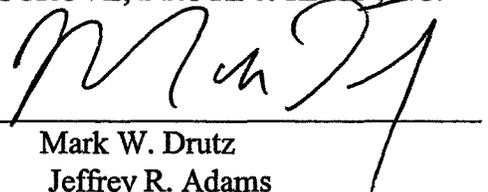
Re: John B. Cundiff and Barbara C. Cundiff, et al. v. Donald Cox and Catherine Cox
Yavapai County Superior Court Cause No. CV 2003-0399

Dear David:

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

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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

MUSGROVE DRUTZ & KACK
AUG 04 2005
RECEIVED

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
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JOHN G. MULL
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August 4, 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

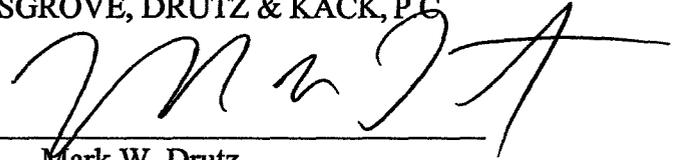
Re: John B. Cundiff and Barbara C. Cundiff, et al. v. Donald Cox and Catherine Cox
Yavapai County Superior Court Cause No. CV 2003-0399

Dear David:

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