

1 J. Jeffrey Coughlin (013801)  
2 **J. JEFFREY COUGHLIN PLLC**  
3 1570 Plaza West Drive  
4 Prescott, Arizona 86303  
5 Telephone: (928) 445-4400  
6 Facsimile: (928) 445-6828  
7 j.coughlin@azbar.org  
8 Attorney for Plaintiffs

SUPERIOR COURT  
YAVAPAI CO ARIZONA  
2015 MAY -7 PM 4:10 ✓  
COUNTY CLERK  
BY: ~~K. CASHAM~~

6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
7 IN AND FOR THE COUNTY OF YAVAPAI

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

14 Plaintiffs,

15 vs.

16 DONALD COX and CATHERINE COX,  
17 husband and wife,

18 Defendants.

CASE NO. P1300CV20030399

**OBJECTION TO DEFENDANTS'  
COXES MOTION FOR NEW  
TRIAL RE: AWARD OF  
ATTORNEYS' FEES TO  
CUNDIFF PLAINTIFFS  
PURSUANT TO  
ARIZ.R.CIV.P.59(A) AND, IN  
THE ALTERNATIVE, MOTION  
TO ALTER OR AMEND  
JUDGMENT PURSUANT TO  
ARIZ.R.CIV.P. 59(L)**

**AND**

**CROSS MOTION TO ALTER  
OR AMEND JUDGMENT  
PURSUANT TO ARIZ. R. CIV. P.  
59(L)**

**(Oral Argument Requested)**

21 Plaintiffs, by and through their attorney undersigned, hereby object to Defendants' Coxes  
22 Motion for New Trial Re: Award of Attorneys' Fees to Cundiff Plaintiffs for the reasons set forth  
23 below and also request that this Court alter or amend its decision denying Plaintiffs the  
24 attorneys' fees generated by their undersigned attorney, J. Jeffrey Coughlin. Defendants argue  
25 that this Court's distinction between the Wilhelmssen bills for attorneys' fees (sent to the

1 Cundiffs) versus the Coughlin bills for attorneys' fees (sent to Alfie Ware) was a distinction  
2 without a difference. This same challenge has been made before and considered by this Court  
3 before it issued its Ruling. This Court can amend its decision on the Coughlin fees and render  
4 consistent its Ruling based on a previous filing in this case.

5 In its April 7, 2015 signed judgment minute entry, this Court listed fourteen filings that it  
6 had considered before issuing its Ruling. Those fourteen filings were voluminous. One of those  
7 filings buried in the list may shed some light on this Court's concern when it compared the  
8 affidavits of Wilhelmsen and Coughlin and noted:

9 Wilhelmsen's monthly billing statement identified the clients as  
10 Mr. and Mrs. John Cundiff v. Donald and Katherine Cox, Deed  
11 Restriction Enforcement. The Wilhelmsen affidavit avows "The  
12 Client has agreed to or has paid the hourly billing rates . . ."

13 Coughlin's monthly billing statement identified the client as Alfie  
14 Ware, Coyote Springs. The Coughlin affidavit avows "The Client  
15 has paid or agreed to pay the total charges . . .". The Coughlin  
16 affidavit does not explain the nexus between the deed restriction  
17 enforcement case against the Coxes and M. Ware.

18 The tenth filing listed in this Court's Ruling (8<sup>th</sup> line from bottom of page one) was the  
19 reply Plaintiffs filed to address Defendants' argument that Alfie Ware was paying the Plaintiff's  
20 attorneys' fees, not the Plaintiffs. That filing was entitled "*Reply in Support of Plaintiffs' Motion  
21 for Award of Attorneys' Fees and Non-Taxable Costs*". That filing does explain the nexus  
22 between the deed restriction enforcement case against the Coxes and Mr. Ware. The first legal  
23 argument stated on page 2 of the Reply stated:

24 **A. Plaintiffs paid fees and agreed to reimburse Alfie Ware the fees  
25 he advanced**

At the outset of this litigation, Plaintiffs and Alfie Ware discussed  
how they would be able to finance this lawsuit. Attorney  
Wilhelmsen advised Plaintiffs that if Mr. Ware were to finance the  
litigation, in order to recover their fees at the end of the case, there  
would have to be an agreement by the Plaintiffs to repay him. The  
Plaintiffs agreed to do so and periodically have repaid some of  
those fees to Mr. Ware. After the Cundiffs made some payments

1 to Mr. Ware he told them to hold off repaying him until the case  
2 was over (see affidavit of John Cundiff, attached hereto as Exhibit  
3 #1). As a result, billing statements from the Wilhelmsen firm were  
4 sent to Plaintiffs and Mr. Ware and all billing statements from the  
5 undersigned's firm were sent to Mr. Ware. As Defendants state,  
6 there must be an attorney client relationship and an obligation on  
7 the part of the part of the litigant to pay the fees. Plaintiffs have  
8 maintained an attorney client relationship with their attorneys and  
9 they are obligated to Mr. Ware to pay the balance of the fees he has  
10 advanced on their behalf. Plaintiffs have satisfied both  
11 requirements.

12 Exhibit #1 to the Reply (Cundiff affidavit) states, in part:

13 John Cundiff and Barbara Cundiff, being first sworn, state as follows:

- 14 1. We are over the age of eighteen and believe in the obligation of an  
15 oath.
- 16 2. We are property owners in Coyote Springs Ranch, Phase I.
- 17 3. In approximately May of 2003, we, along with the other Plaintiffs  
18 in the Cundiff v. Cox litigation, agreed to repay Alfie Ware for all  
19 of the attorney's fees and costs that he would pay for the litigation.
- 20 4. In fact, we have repaid Mr. Ware some of what he paid and other  
21 plaintiffs have repaid him some of what he paid.

22 A copy of the Cundiff affidavit is attached hereto as Exhibit #1.

23 The engagement letter between the Cundiff Plaintiffs and J. Jeffrey Coughlin identified  
24 John and Barbara Cundiff as Plaintiffs and stated, in part:

25 John and Barbara Cundiff  
7460 N. Coyote Springs Road  
Prescott Valley, AZ 86315

Re: Cundiff, et al. v. Cox  
Dear Mr. and Mrs. Cundiff:

You have requested that this firm (the "Firm") represent you  
("Client"), with regard to certain legal matters. This letter confirms

1 the basis of our representation of Client and the fee agreement with  
2 respect to the representation.

3 1. **Scope of Engagement.** The scope of the engagement will  
4 be the representation of Client in connection with the Cundiff, et al.  
5 v. Cox litigation, together with any other advice and document  
6 preparation as may be requested by Client or relevant thereto. I will  
7 have primary responsibility for the representation and will utilize  
8 my paralegal as necessary. If, at any time, you have any questions  
9 on this matter or the service you are receiving, please telephone me  
10 at once.

11 2. **Fees.** The Firm's schedule of hourly and flat rates for  
12 attorneys and other members  
13 of our professional staff is based on years of experience,  
14 specialization and level of professional attainment. I will charge  
15 Client \$250.00 per hour for all legal work performed by me on this  
16 file and will charge for work performed by my paralegal at \$90.00  
17 per hour.

18 You have informed me that the fees and costs in this case will be  
19 paid by Alfie and Ce Ce Ware, who are neighbors of yours and  
20 who have been paying for these expenses thus far in this litigation.  
21 As a result of this arrangement, I will be sending monthly bills to  
22 the Wares. If you would like for me to send you copies of the bills,  
23 please let me know and I will do so.

24 A copy of the fully executed engagement letter is attached hereto as Exhibit #2.

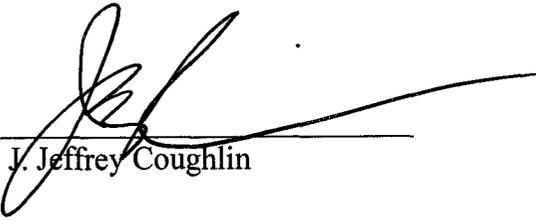
25 Two of the other plaintiffs (Kenneth and Katheryn Page) reimbursed Mr. Ware at least  
\$18,000.00 between the years 2004 and 2009 at which point Mr. Ware postponed the plaintiffs'  
obligation to repay him until the case had concluded (See, Affidavit of Kenneth A. Page and  
Katheryn J. Page, attached hereto as Exhibit # 3).

Defendants Cox have requested this Court grant them a new trial or alternatively amend  
its ruling regarding its award of the Wilhelmsen fees and award no fees at all to the Plaintiffs.  
Defendants do not stop there however; they (the non-prevailing parties) then ask the Court to  
award them their fees. The Plaintiffs prevailed in this case and this Court has already awarded  
them the Wilhelmsen fees. For the reasons set forth in the Cundiff and Page affidavits, the

1 engagement letter along with the explanation contained in Plaintiffs' "Reply in Support of  
2 Plaintiffs' Motion for Award of Attorneys' Fees and Non-Taxable Costs", Plaintiffs urge the  
3 Court to resolve any inconsistency by awarding them the Coughlin fees of \$93,944.50 and costs  
4 of \$2,772.63. Plaintiffs also request that the Court award Plaintiffs all of the fees and costs they  
5 have incurred since the filing of the above Reply filed on August 21, 2013.

6  
7 DATED this 7<sup>th</sup> day of May, 2015.

8  
9 **J. JEFFREY COUGHLIN PLLC**

10  
11 By:   
12 J. Jeffrey Coughlin

13 COPY of the foregoing  
14 mailed this 7<sup>th</sup> day of  
15 May, 2015 to:

16 Jeffrey R. Adams  
17 THE ADAMS LAW FIRM PLLC  
18 125 Grove Avenue  
19 P.O. Box 2522  
20 Prescott, AZ 86302  
21 Attorney for Defendants listed in Answer to  
22 First Amended Complaint by Joined Property Owner Defendants  
23 Dated September 22, 2010

24 David K. Wilhelmsen  
25 Favour & Wilhelmsen PLLC  
P.O. Box 1391  
Prescott, AZ 86302  
Attorneys for James Verilek

Mark W. Drutz  
Sharon M. Flack  
Musgrove Drutz Kack & Flack, PC  
1135 W. Ironwood Springs Road  
P.O. Box 2720  
Prescott, AZ 86302

1 William "Bill" Jensen  
14556 Howard Mesa Loop  
2 Williams, AZ 86046  
3 Pro Per

4 Karen L. Wargo  
5 Michael P. Wargo  
9200 E. Spurr Lane  
6 Prescott Valley, AZ 86315

7 Linda J. Hahn  
10367 W. Mohawk Lane  
8 Peoria, AZ 85382

9 Noel J. Hebets  
10 NOEL J. HEBETS, PLC  
2515 North 48<sup>th</sup> Street #3  
11 Phoenix, AZ 85008  
Attorney for William M. Grace

12 Robert E. Schmitt  
13 MURPHY, SCHMITT, HATHAWAY & WILSON, P.L.L.C.  
P.O. Box 591  
14 Prescott, AZ 86302  
Attorneys for Robert H. Taylor and  
15 Teri A. Thomson-Taylor

16 John and Rebecca Feddema  
9550 E. Spurr Lane  
17 Prescott Valley, AZ 86315

18 Gary and Sabra Feddema  
9601 Far Away Place  
19 Prescott Valley, AZ 86315

20 Sergio Martinez and Susana Navarro  
10150 N Lawrence Lane  
21 Prescott Valley, AZ 86315

22 William R. and Judith K. Stegeman Trust  
9200 E. Far Away Place  
23 Prescott Valley, AZ 86315

24 Rynda and Jimmy Hoffman  
25 9650 E. Spurr Lane  
Prescott Valley, AZ 86315

1 William and Shaunla Heckethorn  
9715 E. Far Away Place  
2 Prescott Valley, AZ 86315

3 Leo and Marilyn Murphy  
9366 E. Turtlerock Road  
4 Prescott Valley, AZ 86315

5 James and Leslie Richie  
6 No current address

7 Rhonda Folsom  
9305 N. Coyote Springs Rd.  
8 Prescott Valley, Arizona 86315

9 Kenneth Paloutzian  
8200 Long Mesa Drive  
10 Prescott Valley, AZ 86315

11 Bonnie Rosson  
8950 E. Plum Creek Way  
12 Prescott Valley, AZ 86315

13 Robert Lee and Patti Ann Stack/Robert Lee and Patti Ann Stack Trust  
14 10375 Lawrence Lane  
15 Prescott Valley, AZ 86315

16 John and Dusti Audsley  
966 N. Stirrup High Drive  
17 Dewey, AZ 86327

18 Dana E. and Sherrilyn G. Tapp  
8595 E. Easy Street  
19 Prescott Valley, AZ 86315

20 Richard and Beverly Strissel  
9350 E. Slash Arrow Drive  
21 Prescott Valley, AZ 86314

22 Lloyd E. and Melva Self  
9250 E. Slash Arrow Drive  
23 Prescott Valley, AZ 86315

24  
25 By: Amber Beadford

Affidavit of  
John Cundiff and Barbara Cundiff

STATE OF ARIZONA     )  
  )ss.  
County of YAVAPAI     )

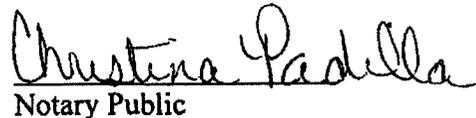
John Cundiff and Barbara Cundiff, being first sworn, state as follows:

1. We are over the age of eighteen and believe in the obligation of an oath.
2. We are property owners in Coyote Springs Ranch, Phase I.
3. In approximately May of 2003, we, along with the other Plaintiffs in the Cundiff v. Cox litigation, agreed to repay Alfie Ware for all of the attorney's fees and costs that he would pay for the litigation.
4. In fact, we have repaid Mr. Ware some of what he paid and were planning to make further payments when he told us not to pay him any more until the case was over.

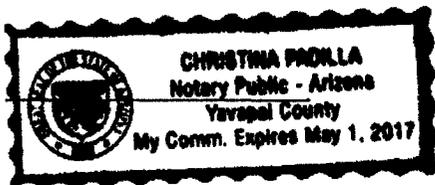
  
JOHN CUNDIFF

  
BARBARA CUNDIFF

SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of August, 2013, by  
John Cundiff and Barbara Cundiff

  
Notary Public

My Commission Expires:



LAW OFFICES OF  
**J. JEFFREY COUGHLIN PLLC**

114 SOUTH PLEASANT STREET  
PRESCOTT, ARIZONA 86303

April 23, 2009

RECEIVED

APR 29 2009

J. Jeffrey Coughlin PLLC

John and Barbara Cundiff  
7460 N. Coyote Springs Road  
Prescott Valley, AZ 86315

Re: Cundiff, et al. v. Cox

Dear Mr. and Mrs. Cundiff:

You have requested that this firm (the "Firm") represent you ("Client"), with regard to certain legal matters. This letter confirms the basis of our representation of Client and the fee agreement with respect to the representation.

1. **Scope of Engagement.** The scope of the engagement will be the representation of Client in connection with the Cundiff, et al. v. Cox litigation, together with any other advice and document preparation as may be requested by Client or relevant thereto. I will have primary responsibility for the representation and will utilize my paralegal as necessary. If, at any time, you have any questions on this matter or the service you are receiving, please telephone me at once.

2. **Fees.** The Firm's schedule of hourly and flat rates for attorneys and other members of our professional staff is based on years of experience, specialization and level of professional attainment. I will charge Client \$250.00 per hour for all legal work performed by me on this file and will charge for work performed by my paralegal at \$90.00 per hour.

The fees for the type of work envisioned are significantly influenced by the criteria for reasonableness specified by the Arizona Rules of Professional Conduct and the American Bar Association Code of Professional Responsibility which include the time and labor required for the tasks performed; the difficulty, novelty or complexity of the problem presented; the skill required to perform the tasks in a professional manner; the time constraints imposed by the client or the nature of the matter; the fees customarily charged for similar services; and the nature of the results obtained for the client.

In addition to the hourly rate, Client will be billed for all costs and expenses incurred on Client's behalf, including filing fees, recording fees, court costs, copying charges, FAX charges, publication fees, printing charges, long distance telephone calls, telecommunication charges, transportation expenses, transcript and/or deposition costs, photocopies (currently .15 per page), postage, delivery charges, computer research, extraordinary secretarial service charges, expert and witness fees, parking fees or other out-of-pocket costs. These costs will be detailed on Client's billing statement and may increase from time to time. If the Firm must incur a substantial

disbursement (i.e. over \$200.00) on Client's behalf, I may ask that the cost be paid directly by Client. You have informed me that the fees and costs in this case will be paid by Alfie and Ce Ce Ware, who are neighbors of yours and who have been paying for these expenses thus far in this litigation. As a result of this arrangement, I will be sending monthly bills to the Wares. If you would like for me to send you copies of the bills, please let me know and I will do so.

3. **Annual Increases.** To account for inflation, unless the parties otherwise agree in writing, the Firm shall have the right to increase the stated hourly rates of each category of lawyer or other professional referenced above on January 1 of each calendar year.

4. **Retainer.** This Firm's policy is to require a retainer from clients prior to beginning work on their behalf. However, I have determined that this matter will not require a retainer.

5. **Billing Procedure.** We render statements for all professional services, fees and costs on a monthly basis, except in those cases when it is more appropriate to bill client upon completion of a matter. Unless otherwise requested, our billings contain a brief summary of the nature of the services rendered, and the fees and the costs advanced. Client may receive a statement that is prepared before the Firm is able to determine the amount of all disbursements or costs, in which case Client will be billed for those costs after they are determined.

6. **Terms of Payment.** All billing statements are due and payable upon receipt and considered to be past due if not paid within thirty (30) days after the date of the invoice. Because of the added bookkeeping and accounting charges inherent in delayed payment, a service charge of one and one-half percent per month (18% per annum) will be imposed on all past-due balances. This Firm reserves the right to discontinue legal services until we are paid in full or until satisfactory payment arrangements are made.

7. **Cooperation by Client.** Client agrees to cooperate with the Firm in our representation by complying on a timely basis with all reasonable requests for information and assistance in connection with our representation. Client agrees to truthfully inform the Firm of all facts and information related to the representation and scope of engagement.

8. **Disposition of Documents.** Any documents, materials, or other items provided to the Firm shall become the property of the Firm, unless we receive written notice to the contrary. We shall use reasonable efforts to preserve such documents, materials or other items. We shall have no obligation to retain any documents, materials, other items or files pertaining to Client's affairs for more than five (5) years following the completion of the work on that matter. We shall have no obligation to turn over to Client any of our files, except for copies made at Client's request and expense and original documents which Client requests in writing upon termination of my representation.

9. **Use of Internet.** Upon Client's request, we may correspond or send files or documents over the "Internet." This Firm reserves the right to refuse to send any documents or correspondence over the Internet for any reason whatsoever. You are cautioned to exercise security measures commensurate with the sensitivity of the documents or files relating to Client's legal and business matters.

10. **Use of Client's Name.** Client hereby authorizes us to use Client's name on a list of clients this Firm represents in connection with any professional business matters of this Firm. Client's name will not be used for any other purpose.

11. **Termination.** Client has the right to terminate the Firm's representation at any time. The Firm has the same right, subject to an obligation to give Client reasonable notice, so that Client may arrange for alternate representation. In addition, if Client's account is not paid in full within thirty-five (35) days of receipt of our statement, we reserve the right to immediately discontinue legal services until we are paid in full or until satisfactory payment arrangements are made.

12. **Disputes.** Any controversy, dispute, or question arising out of, in connection with, or in relation to this Agreement or its interpretation, performance or nonperformance, or any breach thereof, shall be determined by arbitration conducted in accordance with the then-existing rules of the State Bar of Arizona and Arizona Fee Arbitration Committee, American Arbitration Association or the Federal Mediation and Conciliation Service, and any decision rendered by the Arbitrator shall be final and binding upon the parties; and Judgment upon any arbitration award, including an award of damages, may be entered in any court having jurisdiction thereof. The Arbitrator may not amend, modify, or substitute any of the terms or conditions of this Agreement and his jurisdiction is thereby limited.

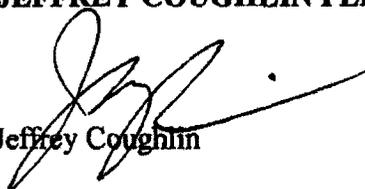
13. **Advance Waiver of Conflicts.** The Firm represents many other companies and individuals. It is possible, if not probable, that some of our present or future clients could have disputes or transactions with Client. Therefore, as a condition to our undertaking this matter, client agrees that the Firm may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for Client, even if the interests of such entities in those other matters are directly adverse to Client. We agree, however, that Client's prospective consent to conflicting representation contained in this paragraph shall not apply in any instances where, as a result of our representation of Client, we have obtained privileged, proprietary or other confidential information of a nonpublic nature that, if known to such other entity, could be used in any such other matter by such entity to Client's material disadvantage.

If the above is consistent with your understanding regarding my representation, please execute the enclosed copy of this letter and return it to me at your earliest convenience. Should you have any questions, please do not hesitate to contact me.

We appreciate the opportunity to represent you in this matter. We cannot and do not warrant or predict results or final developments. Be assured that it is my desire to afford you conscientious, faithful and diligent services, seeking at all times to achieve solutions that are reasonable for you.

Sincerely,

**J. JEFFREY COUGHLIN PLLC**

  
J. Jeffrey Coughlin

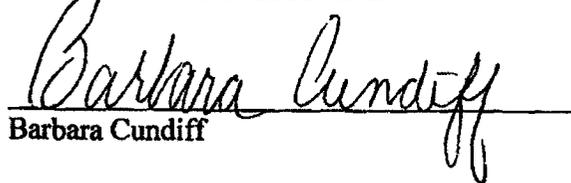
JJC:cp  
Enclosure

**ACCEPTED AND AGREED:**

  
John Cundiff

4/25/09  
Date

**ACCEPTED AND AGREED:**

  
Barbara Cundiff

4/25/09  
Date

Affidavit of  
Kenneth A. Page and Katheryn J. Page

STATE OF ARIZONA        )  
                                      )ss.  
County of YAVAPAI        )

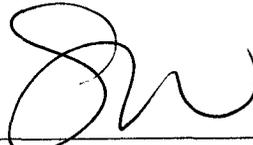
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4. Starting in 2004 and continuing to 2009, we tried to repay Mr. Ware some amount each year. We repaid Mr. Ware at least \$18,000.00 during that time period and were planning to make further payments when he told us not to pay him any more until the case was over.

  
KENNETH A. PAGE

  
KATHERYN J. PAGE

SUBSCRIBED AND SWORN to before me this 7 day of May, 2015, by  
Kenneth A. Page and Katheryn J. Page.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

May 12, 2015

