

No. 12-15738-EE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

KARLA VANESSA ARCIA, ET AL.,
Plaintiffs-Appellants,

v.

FLORIDA SECRETARY OF STATE,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA (NO. 12-22282-CIV-ZLOCH)

**MOTION TO TRANSFER OR, ALTERNATIVELY, MOTION FOR 90
EXTENSION OF TIME TO FILE RESPONSE TO MOTION FOR
ATTORNEYS' FEES**

CERTIFICATE OF INTERESTED PERSONS

Pursuant to 11th Circuit Rule 26.1-1, Appellee, Florida Secretary of State Kenneth W. Detzner, provides the following list of interested persons:

Advancement Project – Attorneys for Appellants

Antoine, Melande – Appellant

Arcia, Karla Vanessa – Appellant

Atkinson, J. Andrew – Attorney for Appellee

Cartagena, Juan – Attorney for Appellants

Carvin, Michael A. – Attorney for Appellee

Culliton-Gonzalez, Katherine – Attorney for Appellants

Davis, Ashley E. – Attorney for Appellee

De Leon, John – Attorney for Appellants

Detzner, Kenneth, Florida Secretary of State – Appellee

Fair Elections Legal Network – Attorneys for Appellants

Flanagan, Catherine M. – Attorney for Appellants

Florida Immigrant Coalition, Inc. – Appellant

Florida New Majority, Inc. – Appellant

Friedman, Joshua N. – Attorney for Appellants

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Gandy, Jr., W. Eugene – Attorney for Appellee

Goldman, Marc A. – Attorney for Appellants

Gore, John M. – Attorney for Appellee

Hair, Penda – Attorney for Appellants

Hovland, Ben – Attorney for Appellants

Jenkins, Marina K. – Attorney for Appellants

Jenner & Block LLP – Attorneys for Appellants

Jones Day – Attorneys for Appellee

Kanter Cohen, Michelle – Attorney for Appellants

Kaplan, Lindsay Eyster – Attorney for Appellants

Katsas, Gregory G. – Attorney for Appellee

LatinoJustice PRLDEF – Attorneys for Appellants

Law Offices of Chavez & De Leon – Attorneys for Appellants

Masters, Lorelie S. – Attorney for Appellants

National Congress for Puerto Rican Rights – Appellant

Nkwonta, Uzoma – Attorney for Appellants

Nordby, Daniel E. – Attorney for Appellee

Perez, Jose – Attorney for Appellants

Postman, Warren D. – Attorney for Appellee

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Project Vote – Attorneys for Appellants

Ramamurti, Bharat R. – Attorney for Appellants

Roberson-Young, Katherine – Attorney for Appellants

Rogers, Kristen M. – Attorney for Appellants

Sen, Diana – Attorney for Appellants

Vail, Jason – Attorney for Appellee

Veye Yo – Appellant

Zloch, The Honorable William J. – U.S. District Court Judge

1199SEIU United Healthcare Workers East – Appellant

Appellee, Florida Secretary of State Kenneth W. Detzner (“Secretary”), respectfully moves to transfer consideration of the issue of appellate attorneys’ fees to the District Court for the Southern District of Florida. Appellants oppose. Alternatively, the Secretary moves for a 90-day extension of time to file his response to Appellants’ Motion for Attorneys’ Fees. Appellants oppose.

The Secretary initially asked this Court for an extension of time until January 20, 2015, to respond to the Appellants’ Motion for Attorneys’ Fees. The holidays and holiday travel schedule made it difficult to confer with the client. The Court granted that request on December 22, 2014. Upon further consideration, the Secretary suggests that the better course is to take Appellants’ alternative suggestion in their fee motion and transfer consideration of attorneys’ fees to the district court. *See* Pls.-Appellants’ Mt. for Att’ys Fees at n.1 (“If this Court believes that a transfer is necessary for the district court to consider fees accrued before it, Plaintiffs hereby move for such a transfer.”). Alternatively, the Secretary requests a 90-day extension of time to respond to Appellants’ Motion for Attorneys Fees for the same reasons supporting a transfer as stated below and, additionally, because the Secretary has recently retained additional outside counsel, as listed in the signature block below, for fee litigation.

The Secretary agrees with the Appellants that “it makes more sense for the district court to consider fees from the stages of the litigation that occurred before

it particularly given the remand of this case to the district court.” Pls.-Appellants’ Mt. for Att’ys Fees at n.1; *see Arcia v. Florida Secretary of State*, --- F.3d ----, No. 12-15378, 2014 WL 6235917 at *9 (11th Cir. Nov. 17, 2014) (remanding action). It therefore follows that transfer will enable consideration of *all* attorneys’ fees and costs (from both the appellate and lower court) at once rather than piecemeal, which will conserve judicial time and effort, and avoid conflicting decisions. Additionally, transfer will allow the district court to perform the intensive factual review associated with fee litigation. *See ACLU v. Barnes*, 168 F.3d 423, 427 (11th Cir.1999). Indeed, the district court is better positioned to determine both the reasonableness of hours claimed in an allegedly “substantively and procedurally complex case of first impression” before it, Pls.-Appellants’ Mt. for Att’ys Fees at 1, as well as the “prevailing market rates” in the Southern District, *Norman v. Hous. Auth. of the City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988). Any dispute of fact would require an evidentiary hearing for which the district court would also be better suited. *See Norman*, 836 F.2d at 1303 (“Occasionally, evidentiary hearings are necessary”).

WHEREFORE, the Secretary respectfully requests that this Court transfer consideration of the issue of appellate attorneys’ fees to the District Court for the Southern District of Florida or, alternatively, extend the time for the Secretary to

respond to Appellants' Motion for Attorneys' Fees until and including 90 days after the date of an order granting the extension.

Respectfully submitted,

/s/ Ashley E. Davis

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Counsel for Defendant-Appellee
Secretary of State Kenneth W. Detzner

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 2015, I caused the foregoing document to be filed with the court and served on all parties by filing through the Court's CM/ECF system

Ashley E. Davis
Attorney