

**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.

Case No. 12-15738-EE

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO. 1:12-CV-22282-WJZ**

PLAINTIFFS-APPELLANTS' MOTION FOR CLARIFICATION

Appellants believe that there is not yet a due date for their reply brief in the above-captioned case, because this Court's December 31, 2012, request that the parties address a Jurisdictional Question suspended the briefing schedule pursuant to Eleventh Circuit Rule 31-1(d). Appellants request clarification, however, because Appellees have now filed their opposition brief, which would ordinarily trigger the date for the filing of a reply. Given that the purpose of Rule 31-1(d) appears to be: (1) to enable the parties to avoid drafting briefs that may become irrelevant if the court decides there is no jurisdiction, and (2) to enable the parties to respond in their briefs to any further questions from the court, Appellants

believe that their reply brief is not due until the court issues a further directive. But Appellants obviously do not want to risk missing a briefing deadline.

Appellants' filed their Opening Brief on December 17, 2012. Under the Eleventh Circuit rules, Appellees' brief in response would have been due thirty days later, on January 16, 2013. In the interim, however, the Court presented the parties with a Jurisdictional Question on December 31, 2012, requesting that the parties address the extent to which the Court has jurisdiction over the district court's October 4, 2012 interlocutory order.

In such circumstances, Eleventh Circuit Rule 31-1(d) states that the due date for Appellees' brief in response "shall be postponed" until the Court has made a determination that the appeal shall either proceed, or until the Court has directed counsel to address the jurisdictional question in their briefs on the merits. L.R. 31-1(d).¹ As a result of this rule, Appellees did not file their opposition brief on January 16, 2013, as would otherwise have been required.

Notwithstanding this rule, however, Appellees went ahead and filed their response brief on January 22, 2013, not providing the Court time to rule on the

¹ 11th Cir. Rule 31-1(d) provides in full that "[t]he due date for filing appellee's brief shall be postponed until the court determines that the appeal shall proceed or directs counsel and pro se parties to address the jurisdictional question(s) in their briefs on the merits. When the court rules on a jurisdictional question, a new due date will be set for filing appellee's brief if the appeal is allowed to proceed."

Jurisdictional Question and set a new due date, and/or provide direction for more broad merits briefing.

It is Appellants' view that the briefing schedule remains outstanding, and that Appellees' preemptive filing of their brief in response has not triggered the deadline for Appellants' brief in reply.² The purpose of Rule 31-1(d) is not to permit Appellees additional time to file their brief while binding Appellants to the ordinary time frame. The purpose of the rule appears to be to enable parties to refrain from engaging in any further briefing until they receive further guidance from this Court, and, if the Court sets a new schedule but asks additional questions, to enable the parties to address those questions in their briefs. Neither purpose would be served if Appellants were required to file a reply without further guidance. Appellants therefore assume there is not yet a due date for their reply. Nonetheless, Appellants seek the Court's clarification on this point.

Dated: January 28, 2013

Respectfully submitted,

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² Were Appellees' brief, as filed on January 22, to trigger the due date for Appellants' brief in reply, the brief would be due on February 8, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that, on this 28th day of January 2013, a true and correct copy of the foregoing Motion for Clarification was served on all counsel of record via CM/ECF.

Dated: January 28, 2013

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