

**Case No. 10-2102**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

**JOHN DOE,**

**Plaintiff-Appellee,**

**v.**

**CITY OF ALBUQUERQUE,**

**Defendant-Appellant.**

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**On Appeal from the United States District Court  
for the District of New Mexico  
The Honorable M. Christina Armijo  
United States District Judge  
Case No. 08-CV-1041 MCA/LFG**

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**APPELLEE’S OPPOSED MOTION FOR AN ORDER AWARDING  
APPELLATE ATTORNEYS’ FEES, EXPENSES AND COSTS AND  
REMANDING TO THE DISTRICT COURT FOR DETERMINATION**

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Before **BRISCOE**, Chief Judge, **EBEL** and **O’BRIEN**, Circuit Judges.

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Plaintiff-Appellee John Doe, through the undersigned counsel, respectfully moves this Court for an Order awarding him appellate attorneys’ fees, expenses, and costs. As grounds, Appellee states:

1. On April 19, 2010, following the district court’s entry of summary judgment for Plaintiff-Appellee John Doe, Plaintiff-Appellee timely filed in the district

court an *Unopposed Motion to Stay Proceedings Relating to Plaintiff's Motion for Attorneys' Fees and Expenses and Plaintiff's Bill of Costs* (hereinafter "Fee Motion"). See Exhibit 1, attached hereto. In his Fee Motion, Plaintiff-Appellee John Doe stated the following grounds for the relief sought therein:

As a matter of judicial economy and efficiency, proceedings in th[e district court] related to attorneys' fees and litigation expenses pursuant to 42 U.S.C. § 1988 and statutory costs should be stayed pending the resolution of defendant's appeal [to this Court] on the merits. *If plaintiff prevails on appeal, then the issue of fees and costs, as well as plaintiff's appellate fees and costs, may be addressed after remand in a single proceeding before th[e district court].* If plaintiff does not prevail on appeal, his entitlement to fees and costs will have been extinguished and any work undertaken by th[e district court] and counsel for the parties on the issues of fees and costs in advance of the resolution of the appeal will have been wasted.

Exhibit 1, at page 2, ¶ 4 (emphasis supplied).

2. Defendant-Appellant City of Albuquerque concurred in Appellee's Fee Motion. See, *Id.* at page 1, ¶ 1.
3. On April 20, 2010, the district court granted Plaintiff-Appellee's Fee Motion. See Exhibit 2 (Order), attached hereto.
4. Defendant-Appellant City of Albuquerque appealed the district court's grant of summary judgment to Plaintiff-Appellee John Doe. On January 20, 2012, this Court affirmed the district court's grant of summary judgment to

Plaintiff-Appellee John Doe. *See* Opinion and Judgment (10-2102), entered January 20, 2012.

5. As a result, Appellee John Doe is the prevailing party on this appeal; Defendant-Appellant City of Albuquerque has until February 3, 2012 to file a motion seeking rehearing from this panel, or rehearing en banc, before the mandate issues. Given this procedural posture, the instant motion is timely filed in this Court.
6. For purposes of 42 U.S.C. § 1988, Appellee John Doe has “succeeded on a ‘significant issue in litigation,’” (*see, In re Kansas Congressional Districts Reapportionment Cases*, 745 F.2d 610, 612 (10<sup>th</sup> Cir. 1984), quoting *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 1939 (1983)), specifically, the First Amendment to the U.S. Constitution in this 42 U.S.C. § 1983 civil rights action, and thus, as the prevailing party in the district court and on this appeal, is entitled to an award of reasonable appellate attorneys’ fees and expenses under 42 U.S.C. § 1988, and statutory appellate costs pursuant to Fed. R. App. P. 39 and 28 U.S.C. § 1920, in addition to those attorneys’ fees, expenses and costs incurred during litigation in the district court. *See* Exhibits 1 and 2.

7. Accordingly, Appellee John Doe respectfully requests an Order from this Court granting him reasonable appellate attorneys' fees, expenses, and costs pursuant to 42 U.S.C. § 1988, Fed. R. App. P. 39 and 28 U.S.C. § 1920.
8. Further, Appellee John Doe also respectfully requests that, as contemplated by the parties and consistent with its longstanding practice, this Court remand to the district court for its determination of those appellate attorneys' fees, expenses, and costs, along with its determination of fees, expenses and costs incurred in the district court. *See* Exhibits 1 and 2. *See also, e.g., Roth v. Green*, 466 F.3d 1179 (10<sup>th</sup> Cir. 2006) (remanding to district court for determination of appellate attorneys' fees and costs); *Kansas Reapportionment*, 745 F.2d at 614 (same) (citations omitted).
9. Defendant-Appellant City of Albuquerque opposes this motion.

WHEREFORE, Appellee John Doe respectfully requests that this Court grant the relief sought herein.

Respectfully submitted,

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/s/ Brendan K. Egan 1.26.2012

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**CERTIFICATE OF DIGITAL SUBMISSION**

I hereby certify that all required privacy redactions have been made and, with the exception of those redactions, every document submitted in Digital Form or scanned PDF format is an exact copy of the written document filed with the Clerk. I also certify that the digital submissions have been scanned on January 26, 2012 for viruses with the most recent version of a commercial virus scanning program Prevx 3.0 v3.05.220 and, according to the program, are free of viruses.

/s/ Brendan K. Egan 1.26.2012  
Brendan K. Egan

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 26, 2012, I filed the foregoing pleading electronically through the appellate CM/ECF system and caused the following parties and/or counsel to be served electronically through the CM/ECF system:

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