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6                    IN THE UNITED STATES DISTRICT COURT  
7                    FOR THE DISTRICT OF ARIZONA

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9        Charles Edward Byrd,

10    Plaintiff,

11        vs.

12        Joseph M. Arpaio et al.,

13    Defendants.

No. CV04-2701-PHX-NVW

**ORDER**

14                Before the Court is Plaintiff's Motion/Application for Attorneys' Fees (Doc. 174).  
15        This motion includes fees claimed by Fennemore Craig, P.C. (trial counsel) and by Mr.  
16        Jarrett Green (counsel on appeal). Defendants and Fennemore Craig have since settled  
17        their fees dispute, mootng that portion of the motion. (Doc. 179.) Mr. Green continues  
18        to claim his fees.

19                In the Ninth Circuit, a party/attorney seeking fees incurred on appeal must first  
20        move the appellate court for those fees. *Cummings v. Connell*, 402 F.3d 936, 948 (9th  
21        Cir. 2005); *Gametech Int'l, Inc. v. Trend Gaming Sys., L.L.C.*, 380 F. Supp. 2d 1084,  
22        1093-94 (D. Ariz. 2005); *Nader v. Brewer*, No. CV-04-1699-PHX-FJM, 2009 WL  
23        811450, at \*1 (D. Ariz. Mar. 27, 2009). Such a motion was required within 14 days of  
24        the mandate. Ninth Circuit Rule 39-1.6(a). The Ninth Circuit, in its discretion, could  
25        then refer the motion to the district court. *Id.* 39-1.8.


26                This Court's review of the Ninth Circuit's docket shows that Byrd filed no request  
27        for fees incurred on appeal, either as part of his briefs or separately. The mandate is also  
28        silent about fees.

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Apart from this procedural impediment, Mr. Green would be entitled to a substantial award of fees. But this Court may not make such an award unless the Court of Appeals modifies its mandate to allow consideration of such a request.

IT IS THEREFORE ORDERED that Plaintiff's Motion/Application for Attorneys' Fees (Doc. 174) is DENIED.

Dated: December 30, 2011.

  
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Neil V. Wake  
United States District Judge