

No. 10-56971

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD PERUTA, et al.,
Plaintiffs-Appellants,

v.

COUNTY OF SAN DIEGO, et al.,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
(CV 09-02371-IEG)

**APPELLANTS' UNOPPOSED MOTION TO EXTEND DEADLINE FOR
FILING ATTORNEYS' FEES REQUEST;
DECLARATION OF SEAN A. BRADY IN SUPPORT**

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RELIEF SOUGHT

Appellants, Edward Peruta, Michelle Laxson, James Dodd, Dr. Leslie Buncher, Mark Cleary, and CRPA Foundation (collectively, “Appellants”), respectfully ask this Court to revise its March 27, 2014 Order and extend the deadline for Appellants to file their motion for attorneys’ fees until 30 days after the Court issues a final disposition in this case. In other words, Appellants ask the Court to issue an order extending the deadline until the latest of:

- (A) 30 days after the denial of the State of California’s November 26, 2014 Petition for Rehearing or Rehearing En Banc; or
- (B) 30 days after the en banc panel grants en banc review of and affirms the panel decision denying the State of California’s Motion to Intervene; or
- (C) 30 days after the Court denies en banc review of this case on the merits; or
- (D) 30 days after the Court grants en banc review of and files a disposition of this case on the merits.

POSITIONS OF COUNSEL

Mr. James Chapin, counsel for the County of San Diego and Sheriff William D. Gore, does not oppose Appellants’ request to extend the deadline to file their fee motion. Decl. of Sean Brady (“Brady Decl.”) ¶¶ 2-3.

STATUS OF APPEAL

On February 13, 2014, Appellants prevailed in their appeal of this matter. *See Peruta v. County of San Diego*, 742 F.3d 1144 (9th Cir. 2014). Appellees chose not to seek en banc review.

On February 26, 2014, three non-parties separately made efforts to intervene and/or petition for rehearing en banc. Attorney General Kamala Harris, on behalf of the state of California, filed a motion to intervene and a petition for en banc rehearing. The Brady Campaign to Prevent Gun Violence also filed a motion for leave to intervene and a petition for en banc rehearing. And Amici Curiae California Police Chiefs Association and California Peace Officers Association filed a petition for rehearing en banc, but in a footnote asked that if the Court found it did not have authority to file such a petition as amici curiae, to instead construe the document as a motion to intervene—which the Court did.

The Court issued an order on February 28, 2014, stating that the proposed petitions for rehearing filed on February 26, 2014, would be considered timely if this Court granted the petitioners' concurrently filed motions to intervene. Order, ECF No. 126 (Feb. 28, 2014). Appellants timely filed an opposition to the motions to intervene.

Concerned that the filings would delay the finality of the case, Appellants

filed an unopposed motion to extend the fee motion deadline until 30 days after the Court's final resolution of the then-pending motions to intervene and concurrently filed petitions for rehearing en banc. On March 27, 2014, the Court extended the deadline "until thirty days after the latest of: (1) the denial of all pending motions to intervene, (2) the denial of any properly filed petition for rehearing en banc, or (3) the filing of a disposition by an en banc panel." Order, ECF No. 146 (Mar. 27, 2014).

Approximately eight months later, on November 12, 2014, this Court issued an order denying all three motions to intervene. Order, ECF 156 (Nov. 12, 2014). On November 26, 2014, the state of California filed a petition for en banc rehearing of the denial of the state's motion to intervene. That same day Brady Campaign to Prevent Gun Violence moved to join the State's Petition for Rehearing.

In light of these developments, the finality of this case is now in doubt, and Appellants hereby respectfully request further extension of their deadline to file a motion for attorneys' fees.

APPELLANTS' MOTION FOR ATTORNEYS' FEES SHOULD BE DUE ONLY AFTER RESOLUTION OF THIS APPEAL IS FINAL

It is unclear whether the March 27, 2014 order is limited to only the en banc

petitions filed in February 2014, or if it would include the state of California's November 26, 2014 petition. But even if that order was not limited, it could still result in the filing of a premature motion for attorneys' fees. For instance, if the State's petition is granted and the en banc panel reverses the denial of the State's Motion to Intervene, Appellants' motion for fees would be due 30 days later, despite the fact that the case would continue to be litigated. Out of an abundance of caution and in the interest of judicial economy, Appellants move the Court to revise its order and extend the deadline to 30 days after this Court's final determination of this case, making clear which party is ultimately the prevailing party.

The State's pending petition for rehearing or rehearing en banc has put the finality of this matter in doubt and renders the December 12, 2014 deadline to file a request for attorneys' fees premature. An extension will provide the attorneys an opportunity to negotiate the fees, allow the parties to litigate the question of attorneys' fees at a later date with more certainty, and will prevent the Court from having to consider an unnecessary or incomplete motion.

CONCLUSION

In the interests of justice and judicial economy, Appellants respectfully request the Court issue a revised order extending the request for attorneys' fees

deadline until 30 days after final disposition of this case, as described in Section I,
above.

Date: November 26, 2014

MICHEL & ASSOCIATES, P.C.

s/ C.D. Michel
C.D. Michel
Attorney for Plaintiffs-Appellants

DECLARATION OF SEAN A. BRADY

I, Sean A. Brady, declare as follows:

1. I am an attorney at law duly licensed to practice in the State of California and before the Ninth Circuit Court of Appeals. I am an Associate Attorney at Michel & Associates, P.C., attorneys of record for Plaintiffs-Appellants. I am familiar with the facts and pleadings herein. The following is within my personal knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. On or about November 13, 2014, I sent an e-mail to Mr. James Chapin, counsel of record for Defendants-Appellees, asking whether his clients would oppose Appellants' motion to extend the deadline for their request for attorneys' fees. That day, Mr. Chapin responded via e-mail, confirming that Appellees would not oppose such a motion.

3. On or about November 26, 2014, I sent another e-mail to Mr. Chapin to inform him that Appellants would file their motion to extend the deadline that day

and to confirm that Defendants-Appellees remained unopposed to Appellants' extension request. Mr. Chapin responded via e-mail, again indicating his clients' non-opposition.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 26th day of November, 2014, at Long Beach, California.



Sean A. Brady
Declarant

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2014, an electronic PDF of **APPELLANTS' UNOPPOSED MOTION TO EXTEND DEADLINE FOR FILING ATTORNEYS' FEES REQUEST; DECLARATION OF SEAN A. BRADY IN SUPPORT** was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: November 26, 2014

MICHEL & ASSOCIATES, P.C.

s/ C.D. Michel

C.D. Michel

Attorney for Plaintiffs-Appellants