

SUPREME COURT OF ARIZONA

JEANNE KENTCH; TED BOYD; ABRAHAM ) Arizona Supreme Court  
HAMADEH; and REPUBLICAN NATIONAL ) No. CV-23-0205-SA  
COMMITTEE, )  
 ) Mohave County  
Petitioners/Plaintiffs/ ) Superior Court  
Contestants, ) No. S8015CV202201468  
 )  
v. )  
 ) **FILED 10/17/2023**  
HON. LEE F. JANTZEN, JUDGE OF )  
THE SUPERIOR COURT OF THE STATE )  
OF ARIZONA, in and for the )  
County of Mohave, )  
 )  
Respondent Judge, )  
 )  
KRIS MAYES, an individual, )  
 )  
Real Party in Interest/ )  
Contestee )  
 )  
v. )  
 )  
ADRIAN FONTES, in his official )  
capacity as the Secretary of )  
State, et al., )  
 )  
Nominal Defendants. )  
 )  
 )

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**O R D E R**

Respondents Mayes and Fontes requested their reasonable attorney fees, and the Court granted Respondents' request under A.R.S. § 12-349(A)(3) and A.R.S. § 12-350 for their reasonable attorney fees incurred to respond to the petition. The Court found, "Because Petitioners were not only aware that they needed a final judgment to seek appellate relief but also misrepresented to this Court that they

had sought such relief when they had not done so, and because this representation was the underlying premise upon which this petition was brought, and because all of Petitioners' claims for trial court error can be presented on appeal, we find that the special action unnecessarily expanded the proceeding and compelled Respondents to incur the unnecessary expense of filing their court-ordered responses."

Contestee Mayes requests \$42,123.15 for attorney fees and \$154.81 for costs. Secretary of State Fontes seeks \$12,921.50 for attorney fees. Petitioners object to both requests and ask the Court to stay any award or hold it in abeyance. The Court has considered the requests and objections en banc.

As to the fees requested by Contestee Mayes, Petitioners argue that that "[b]oth the time spent and the hourly rates are excessive and should be reduced significantly by this Court." They also contend that "Mayes' counsel failed to demonstrate that significant difficulty or intricacy was required to oppose the Petition for Special Action. The work they performed was excessive in contrast to the relatively simple task of opposing the Petition for Special Action on procedural grounds." However, as Mayes points out, "It is not enough for an opposing party simply to state, for example, that the hours claimed are excessive and the rates submitted too high." *See State ex rel. Corbin v. Tocco*, 173 Ariz. 587, 594 (App. 1992) (also noting the lack of factual detail to support an objection to

the fee application). Petitioners have presented no factual detail to support their argument that the fees requested were unreasonable or duplicative.

Significantly, Petitioners filed their Petition for Special Action asking not only for an order directing the trial court to enter a final judgment but also asking this Court to "revers[e] the trial court's denial of Petitioners' Motion for a New Trial and remand[]for further proceedings." The requested relief prompted an amicus filing by legislative leadership who argued that the "trial court's interpretation of the timing and ballot inspection parameters of A.R.S. §§ 16-676(A) and 16-677 imparted an artificially constricted scope to provisions that the Legislature intended to secure a robust fact-finding process." It was Petitioners' requested relief outside the parameters of an appeal that raised the stakes for the Contestee beyond simply asking for a final judgment. Therefore,

**IT IS ORDERED** awarding Contestee Mayes \$42,123.15 as requested for attorney fees and \$154.81 for costs.

As to the fees requested by Secretary Fontes, Petitioners argue that an award would be improper "because of the longstanding ill effects that may be realized if courts start awarding fees to historically nominal parties in an election case." They also contend it was unnecessary for him to file a response as directed by the Court's briefing order. However, the Petition for Special Action alleged, "Critically, no authority permitted Defendant Secretary to

violate the duty of candor to the tribunal and to falsely assert that Petitioners had no evidence while simultaneously suppressing facts that validated Petitioners' claims." (Petition for Special Action at 32.) Petitioners reiterate that the Secretary's alleged "lack of candor has been material and prejudicial to this litigation. That issue is not going away, even though this Court declined special action jurisdiction." (Objection to Mayes' Fee Application at 5.) The Court concludes that Petitioners' allegations in these proceedings have made the Secretary more than a "nominal" defendant who need not be expected to remain silent to refute these allegations. Therefore,

**IT IS FURTHER ORDERED** awarding Secretary of State Fontes \$12,921.50 as requested for attorney fees.

**IT IS FURTHER ORDERED** denying the request for stay or abeyance.

DATED this 17<sup>th</sup> day of October, 2023.

/s/

\_\_\_\_\_  
ROBERT BRUTINEL  
Chief Justice

TO:

Timothy A LaSota  
Alexander Michael Del Rey Kolodin  
Veronica Lucero  
Arno Naeckel  
James C Sabalos  
Jennifer Wright

Sigal Chattah  
Paul F Eckstein  
Joel W Nomkin  
Alexis E Danneman  
Matthew R Koerner  
Samantha Jones Burke  
Craig A Morgan  
Shayna Gabrielle Stuart  
Jake Tyler Rapp  
Kory A Langhofer  
Emily M Craiger  
Thomas J Basile  
James K Rogers  
Thomas P Liddy  
Joseph Branco  
Karen J Hartman-Tellez  
Jack O'Connor  
Sean M Moore  
Rosa Aguilar  
Joseph E La Rue  
Celeste M Robertson  
Christine Roberts  
Paul Correa  
William P Ring  
Jeff Dalton  
Jean Anne Roof  
Scott Adams  
Ryan Norton Dooley  
Ryan Henry Esplin  
William Davis  
Jason S Moore  
Daniel S Jurkowitz  
Ellen Ridge Brown  
Javier Adalberto Gherna  
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