

**IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA**

THE LEAGUE OF WOMEN VOTERS  
OF FLORIDA, et al.,  
Appellants,

v.

KEN DETZNER, et al.,  
Appellees.

Case No.: 1D14-5614  
L.T. Nos.: 2012-CA-00412  
2012-CA-00490

---

**APPELLANT'S INITIAL BRIEF**

**PERKINS COIE, LLP**

John M. Devaney  
(*Pro Hac Vice* Request to be submitted)  
Marc Erik Elias  
(*Pro Hac Vice* Request to be submitted)  
700 13<sup>th</sup> Street, NW, Suite 600  
Washington, D.C. 20005  
[jdevaney@perkinscoie.com](mailto:jdevaney@perkinscoie.com)  
[melias@perkinscoie.com](mailto:melias@perkinscoie.com)  
[efrost@perkinscoie.com](mailto:efrost@perkinscoie.com)  
[syarborough@perkinscoie.com](mailto:syarborough@perkinscoie.com)

**MESSER CAPARELLO, P.A.**

Mark Herron  
Florida Bar No. 199737  
[mherron@lawfla.com](mailto:mherron@lawfla.com)  
Robert J. Telfer III  
Florida Bar No.: 0128694  
[rtelfer@lawfla.com](mailto:rtelfer@lawfla.com)  
[statecourtpleadings@lawfla.com](mailto:statecourtpleadings@lawfla.com)  
2618 Centennial Place (32308)  
P.O. Box 15579  
Tallahassee, FL 32317  
Telephone: (850) 222-0720  
Facsimile: (850) 224-4359

*Counsel for Appellants*

**Table of Contents**

**STATEMENT OF THE FACTS AND THE CASE .....1**

**SUMMARY OF ARGUMENT .....3**

**ARGUMENT .....4**

**I.    IF THE *STOCKMAN* RULE DOES APPLY, THE ROMO  
    PLAINTIFFS MET ITS REQUIREMENTS.....4**

**II.   SECTION 284.30 DOES NOT APPLY TO THE ROMO  
    PLAINTIFFS’ FEE REQUEST .....5**

**CONCLUSION.....7**

## **Table of Authorities**

### **Cases**

<i>Caufield v. Cantele</i> , 837 So. 2d 371, 377-78 (Fla. 2002).....	5
<i>Stockman v. Downs</i> , 573 So. 2d 835 (Fla. 1991).....	2, 4

### **Statutes**

Section 284.30.....	5
---------------------	---

## **STATEMENT OF THE FACTS AND THE CASE**

Appellants Rene Romo, Benjamin Weaver, William Everett Warinner, Jessica Barrett, June Keener, Richard Quinn Boylan, and Bonita Again (collectively, the “Romo Plaintiffs”), along with Appellants The League of Women Voters of Florida, Common Cause, Brenda Ann Holt, J. Steele Olmstead, Robert Allen Schaeffer, and Roland Sanchez-Medina, Jr. (collectively, the “Coalition Plaintiffs”), appeal the trial court’s denial of their motions for attorneys’ fees. The Romo Plaintiffs hereby adopt and incorporate by reference the factual summaries and arguments made in the Coalition Plaintiffs’ brief pertaining to why this Court should award attorneys’ fees under the private attorney general doctrine. The Romo Plaintiffs write separately to address two distinct points regarding the procedural posture of their claim.

The Romo Plaintiffs requested attorneys’ fees in their initial complaint filed on February 9, 2012. (R1:68.) On August 10, 2012, the trial court granted the Legislative Defendants’ motion to strike the Romo Plaintiffs’ claim for fees. (R18:2509–09.) However, the order granting the Legislative Defendants’ motion to strike expressly permitted the Romo Plaintiffs to renew their request for fees. (R18:2509.)

On August 11, 2014, after prevailing on a number of their challenges to the 2012 Congressional Plan, the Romo Plaintiffs and Coalition Plaintiffs moved the

trial court for attorneys' fees on the basis, *inter alia*, of the private attorney general doctrine. (R93:11472–11561.) The private attorney general doctrine has been adopted in several jurisdictions and awards fees to private parties who prevail in public-interest litigation in situations where the government has refused to act. The Legislative Defendants opposed the Romo Plaintiffs' motion for fees, in part, on the grounds (1) that the Romo Plaintiffs had not adequately pleaded their request for fees under the rule set forth in *Stockman v. Downs*, 573 So. 2d 835 (Fla. 1991), and (2) that the Romo Plaintiffs had not served a pleading for fees on the Department of Financial Services ("DFS") pursuant to section 284.30, Florida Statutes. (R105:13308–13507.)

The trial court denied the Romo Plaintiffs' motion for fees, but acknowledged that both the Romo Plaintiffs and Coalition Plaintiffs had made "a good argument in terms of equity and policy, public policy relative to whether there should be ... [a] Private Attorney General concept." (R126:16320–21.) Nevertheless, the trial court declined to adopt the private attorney general doctrine before it had been expressly recognized by a Florida appellate court. (R126:16321.) The trial court also noted "procedural deficiencies" in denying the motion, but did not specify which of the Legislative Defendants' procedural arguments—i.e., the alleged failure to plead or failure to serve on the DFS—was the basis for its ruling. (R126:16320.)

## SUMMARY OF ARGUMENT

The Romo Plaintiffs did not fail to meet the procedural requirements of either *Stockman v. Downs* or section 284.30.

The *Stockman* pleading rule is limited to statutory or contractual bases for attorneys' fees, not common law bases such as the private attorney general doctrine, and the *Stockman* rule does not apply where, as here, the basis for a fee request arises during the course of litigation. In any event, even if the *Stockman* rule were held to apply here, the Romo Plaintiffs complied with that rule because they sought fees in their complaint and thereby put Legislative Defendants on notice of the fee request.

Section 284.30 does not apply to the request for fees here because that request was made by motion, not a pleading. Moreover, the Romo Plaintiffs were not required to serve their claim for fees in their initial complaint because that claim was stricken by the trial court, and thus there was no operative pleading for fees that could be served. Finally, the Romo Plaintiffs have, concurrently with this brief, served their motion for fees and the instant brief on the DFS in order to cure any defect if this Court rules that section 284.30 does apply to their request.

## ARGUMENT

### Standard of Review

Whether Florida courts should recognize the private attorney general doctrine as a basis for attorneys' fees is a pure question of law subject to de novo review. *See Keck v. Eminisor*, 104 So. 3d 359, 363 (Fla. 2012) (holding that de novo standard applies where appeal "presents a pure question of law"); *Allstate Ins. Co. v. Regar*, 942 So. 2d 969, 971 (Fla. 2d DCA 2006) (holding that determination whether statute provides fee entitlement is "a pure question of law"). The trial court's alternative ruling that procedural issues barred recovery of attorneys' fees is also reviewed de novo. *See BMR Funding, LLC v. DDR Corp.*, 67 So. 3d 1137, 1140-41 (Fla. 2d DCA 2011) (holding that de novo standard applied in reviewing application of *Stockman* doctrine); *Barco v. Sch. Bd. of Pinellas Cnty.*, 975 So. 2d 1116, 1121 (Fla. 2008) ("[A]ppellate courts apply a de novo standard of review when the construction of a procedural rule . . . is at issue.").

### **I. IF THE *STOCKMAN* RULE DOES APPLY, THE ROMO PLAINTIFFS MET ITS REQUIREMENTS**

As an initial matter, the Romo Plaintiffs concur with the arguments made by the Coalition Plaintiffs as to why the *Stockman* rule does not apply to a request for fees under the private attorney general doctrine. *Stockman* applies only to statutory or contractual bases for awarding attorneys' fees, and it only applies to bases for

fees that are present at the outset of litigation. Thus, for the reasons set forth in the Coalition Plaintiffs' brief, neither set of plaintiffs was required to plead fees based on the private attorney general doctrine in their complaints. *See* Coalition Pls.' Br. at 26–29.

In any event, even if the *Stockman* rule were held to apply to claims for fees such as the one at issue here, the Romo Plaintiffs complied with that rule. “The fundamental concern” underlying the *Stockman* rule is “to notify the opposing party of the claims alleged and prevent unfair surprise.” 573 So. 2d at 837. The Romo Plaintiffs pled a claim for attorneys' fees in their original complaint filed on February 9, 2012. While the Court ultimately granted Legislative Defendants' motion to strike this claim because the basis identified by Romo Plaintiffs—Section 57.105, Florida Statutes—was not proper at the pleadings stage, Legislative Defendants have been on notice since at least the Court's August 10, 2012 order that the Romo Plaintiffs could renew their request for fees. *See Caufield v. Cantele*, 837 So. 2d 371, 377-78 (Fla. 2002) (“[M]erely pleading a claim for attorney's fees is sufficient to notify the opposing party and allow it to consider the claim in a decision on whether to proceed.”). For this additional reason, the Romo Plaintiffs' motion for attorneys' fees satisfies the *Stockman* rule.

## **II. SECTION 284.30 DOES NOT APPLY TO THE ROMO PLAINTIFFS' FEE REQUEST**

Section 284.30 provides, in pertinent part:



A party to a suit in any court, to be entitled to have his or her attorney's fees paid by the state or any of its agencies, must serve a copy of the pleading claiming the fees on the Department of Financial Services; and thereafter the department shall be entitled to participate with the agency in the defense of the suit and any appeal thereof with respect to such fees.

Section 284.30 does not bar the Romo Plaintiffs' motion for attorneys' fees. First, while the Romo Plaintiffs asserted a claim for attorneys' fees in their initial complaint, that request was stricken by the trial court. Thus, there was no pending claim for fees during the trial litigation that could have been served on the DFS.

Indeed, there was no claim for fees until the Romo Plaintiffs filed the motion for fees at issue in this appeal on August 11, 2014. This motion was not required to be served on the DFS because it was not a "pleading" within the meaning of section 284.30, as explained by Coalition Plaintiffs in their brief, which the Romo Plaintiffs adopt by reference here. *See* Coalition Pls.' Br. at 29–31.

Moreover, the purpose of section 284.30—i.e., to enable the DFS to participate "in the defense of the suit and any appeal thereof with respect to such fees—was fulfilled here. As the record shows, the DFS was aware of and objected to both the Romo Plaintiffs' and Coalition Plaintiffs' motions for fees at the October 9, 2014 hearing on Plaintiffs' motions for attorneys' fees. (R126:16311–14). To deny the Romo Plaintiffs' fee request despite the fact the DFS was aware of and able to defend the state's interest in avoiding an adverse fee award would be to elevate form over substance. Finally, even though this is not required by the

plain language of section 284.30, Romo Plaintiffs, out of an abundance of caution, have served on the DFS both this brief and their motion for fees at the trial court level.<sup>1</sup> This step has cured whatever supposed “procedural deficiencies” might otherwise prevent the DFS from participating in this litigation.

## CONCLUSION

For the reasons set forth above and in Coalition Plaintiffs’ brief, the Romo Plaintiffs respectfully request that this Court adopt the private attorney general doctrine and hold that the Romo Plaintiffs may recover their attorneys’ fees under that doctrine.

Dated: May 18, 2015

By:     /s/ Mark Herron    

Mark Herron

Florida Bar No.: 199737

Email: [mherron@lawfla.com](mailto:mherron@lawfla.com)

Robert J. Telfer III

Florida Bar No.: 128694

Email: [rtelfer@lawfla.com](mailto:rtelfer@lawfla.com)

MESSER CAPARELLO, P.A.

2618 Centennial Place

Tallahassee, FL 32308

Telephone: (850) 222-0720

Facsimile: (850) 558-0659

Marc Elias

(*Pro Hac Vice* Request to be submitted)

John Devaney

(*Pro Hac Vice* Request to be submitted)

PERKINS COIE LLP

700 13th St., N.W., Suite 700

---

<sup>1</sup> See Tab 1, Declaration of Mark Herron, included in the Appendix.

Washington, D.C. 20005-3960  
Tel: (202) 654-6200  
Fax: (202) 654-6211  
Email: MElias@perkinscoie.com  
Email: JDevaney@perkinscoie.com

*Attorneys for the Appellant/Petitioner*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail this 18 May 2015 to each of the following parties on the attached service list:

/s/ Mark Herron  
Mark Herron  
MESSER CAPARELLO, P.A.  
2618 Centennial Place  
Tallahassee, FL 32308  
Telephone: (850) 222-0720  
Email: [mherron@lawfla.com](mailto:mherron@lawfla.com)

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief was prepared in Times New Roman 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

/s/ Mark Herron  
Mark Herron  
MESSER CAPARELLO, P.A.  
2618 Centennial Place  
Tallahassee, FL 32308  
Telephone: (850) 222-0720  
Email: [mherron@lawfla.com](mailto:mherron@lawfla.com)

## SERVICE LIST

<p>Matthew J. Carson, General Counsel          Florida House of Representatives          422 The Capitol          402 South Monroe Street          Tallahassee FL 32399-1300  <i>Primary Email:</i>  <a href="mailto:matthew.carson@myfloridahouse.gov">matthew.carson@myfloridahouse.gov</a></p>	<p>Charles T. Wells          George N. Meros, Jr.          Jason L. Unger          Andy Bardos          GRAY ROBINSON, P.A.          Post Office Box 11189          Tallahassee, FL 32302  <i>Primary Email:</i>  <a href="mailto:charles.wells@gray-robinson.com">charles.wells@gray-robinson.com</a>  <a href="mailto:george.meros@gray-robinson.com">george.meros@gray-robinson.com</a>  <i>Secondary Email:</i>  <a href="mailto:Croberts@gray-robinson.com">Croberts@gray-robinson.com</a>  <a href="mailto:mwilkinson@gray-robinson.com">mwilkinson@gray-robinson.com</a>  <i>Primary Email:</i>  <a href="mailto:jason.unger@gray-robinson.com">jason.unger@gray-robinson.com</a>  <a href="mailto:andy.bardos@gray-robinson.com">andy.bardos@gray-robinson.com</a>  <i>Secondary Email:</i>  <a href="mailto:tbarreiro@gray-robinson.com">tbarreiro@gray-robinson.com</a></p>
<p>Michael A. Carvin          Louis K. Fisher          JONES DAY          51 Louisiana Avenue N.W.          Washington, D.C. 20001  <a href="mailto:macarvin@jonesday.com">macarvin@jonesday.com</a>  <a href="mailto:lcfisher@jonesday.com">lcfisher@jonesday.com</a></p>	<p>J. Gerald Hebert          J. GERALD HEBERT, P.C.          191 Somerville Street, Unit 415          Alexandria, VA 22304  <a href="mailto:hebert@voterlaw.com">hebert@voterlaw.com</a></p>
<p>George T. Levesque, General Counsel          The Florida Senate          404 South Monroe Street          Tallahassee, FL 32399-1100  <i>Primary Email:</i>  <a href="mailto:levesque.george@flsenate.gov">levesque.george@flsenate.gov</a>  <i>Secondary</i>  <i>Email:</i> <a href="mailto:glevesque4@comcast.net">glevesque4@comcast.net</a>  <a href="mailto:everette.shirlyne@flsenate.gov">everette.shirlyne@flsenate.gov</a></p>	<p>Nancy Abudu          Am. Civil Liberties Union Found. of Fla.          PO Box 111881          4500 Biscayne Blvd., Ste 340          Miami, Florida 33137  <a href="mailto:nabudu@aclufl.org">nabudu@aclufl.org</a></p>

<p>Victor L. Goode  Dorcas R. Gilmore  NAACP  4805 Mt. Hope Drive  Baltimore, MD 21215-3297  vgoode@naacpnet.org  dgilmore@naacpnet.org</p>	<p>Jessica Ring Amunson  Michael B. DeSanctis  Kristen M. Rogers  Paul M. Smith  JENNER &amp; BLOCK LLP  1099 New York Ave, N.W., Suite 900  Washington, D.C. 20001  jamunson@jenner.com  mdesanctis@jenner.com  krogers@jenner.com  <a href="mailto:psmith@jenner.com">psmith@jenner.com</a></p>
<p>Allison J. Riggs  Anita S. Earls  SOUTHERN COALITION FOR  SOCIAL JUSTICE  1415 W. Highway 54, Suite 101  Durham, NC 27707  <a href="mailto:Allison@southerncoalition.org">Allison@southerncoalition.org</a>  <a href="mailto:anita@southerncoalition.org">anita@southerncoalition.org</a></p>	<p>Blaine Winship, General Counsel  OFFICE OF THE ATTORNEY  GENERAL  The Capitol, PL-01  Tallahassee, FL 32399  <a href="mailto:Blaine.winship@myfloridalegal.com">Blaine.winship@myfloridalegal.com</a></p>
<p>Gerald E. Greenberg  Adam M. Schachter  GELBER SCHACHTER &amp;  GREENBERG, P.A.  1441 Brickell Avenue, Suite 1420  Miami, FL 33131  <i>Primary Emails:</i>  <a href="mailto:ggreenberg@gsgpa.com">ggreenberg@gsgpa.com</a>,  <a href="mailto:aschachter@gsgpa.com">aschachter@gsgpa.com</a>  <i>Secondary Email:</i>  <a href="mailto:dgonzalez@gsgpa.com">dgonzalez@gsgpa.com</a></p>	<p>J. Andrew Atkinson  Florida Department of State  R.A. Gray Building  500 S. Bronough Street  Tallahassee, FL 32399  Telephone: (850) 245-6536  Cell: (850) 294-8018  <a href="mailto:jandrew.atkinson@dos.myflorida.com">jandrew.atkinson@dos.myflorida.com</a>;  <a href="mailto:Adavis@dos.state.fl.us">Adavis@dos.state.fl.us</a>;  <a href="mailto:diane.wint@dos.myflorida.com">diane.wint@dos.myflorida.com</a>;</p>
<p>Raoul G. Cantero  Jason N. Zakia  Jesse L. Green  WHITE &amp; CASE, LLP</p>	<p>David B. King  Thomas A. Zehnder  Frederick S. Wermuth  KING, BLACKWELL, ZEHNDER &amp;</p>

<p>Southeast Financial Center, Ste. 4900  200 South Biscayne Boulevard  Miami, FL 33131  <i>Primary Emails:</i>  <a href="mailto:rcantero@whitecase.com">rcantero@whitecase.com</a>  <a href="mailto:jzakia@whitecase.com">jzakia@whitecase.com</a>  <a href="mailto:jgreen@whitecase.com">jgreen@whitecase.com</a></p>	<p>WERMUTH, P.A.  P.O. Box 1631  Orlando, FL 32802-1631  <a href="mailto:dking@kbzwlaw.com">dking@kbzwlaw.com</a>  <a href="mailto:tzehnder@kbzwlaw.com">tzehnder@kbzwlaw.com</a>  <a href="mailto:fwerthem@kbzwlaw.com">fwerthem@kbzwlaw.com</a>  <a href="mailto:aprice@kbzwlaw.com">aprice@kbzwlaw.com</a>  <a href="mailto:vfalcone@kbzwlaw.com">vfalcone@kbzwlaw.com</a>  <a href="mailto:courtfilings@kbzwlaw.com">courtfilings@kbzwlaw.com</a></p>
<p>Ronald G. Meyer  Lynn Hearn  MEYER, BROOKS, DEMMA &amp;  BLOHM  131 North Gadsden Street  P.O. Box 1547  Tallahassee, FL 32302  <a href="mailto:rmeyer@meyerbrookslaw.com">rmeyer@meyerbrookslaw.com</a>  <a href="mailto:lhearn@meyerbrookslaw.com">lhearn@meyerbrookslaw.com</a></p>	<p>The Mills Firm, P.A.  John S. Mills  Andrew D. Manko  Courtney R. Brewer  203 North Gadsden Street, Suite 1A  Tallahassee, FL 32301  <a href="mailto:jmills@mills-appeals.com">jmills@mills-appeals.com</a>  <a href="mailto:amanko@mills-appeals.com">amanko@mills-appeals.com</a>  cbrewer@mills-appeals.com</p>