

ATTACHMENT*

RULES OF CIVIL APPELLATE PROCEDURE

Rule 13. Briefs

(a) Brief of the Appellant. The brief of the appellant shall concisely and clearly set forth under the appropriate headings and in the order here indicated:

1-6. [No change in text.]

7. A short conclusion stating the precise relief sought, including, if applicable, a notice pursuant to Rule 21(a) that the party intends to claim attorneys' fees.

[No change in remaining text.]

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Rule 21. Procedures for Claiming Costs and Attorneys' Fees

(a) ~~Statement of Costs, Objections~~ Timing and Content of Notice. ~~A party entitled to costs or attorneys' fees may, within 10 days after the clerk has given notice that a decision has been rendered, file in the appellate court a verified itemized statement of costs or attorneys' fees on appeal. An adverse party may file objections thereto within 5 days after service of such statement. If no objections are filed, the clerk may tax the costs or attorneys' fees in accordance with these rules. If objections are filed, the party entitled to costs or attorneys' fees may reply within 5 days after service of the objections. The amount of costs or attorneys' fees to be taxed may then be determined by the clerk, or by a member of the appellate court's legal staff designated by administrative order of the appellate court. A party aggrieved by such determination may apply to the appellate court for relief by motion, filed within ten days from the date of the order setting forth such determination, requesting the court to review the statement of costs, the objections thereto, and the reply to the objections. The appellate court shall then determine de novo the amount of costs or attorneys' fees to be taxed, without further hearing or argument.~~ A party intending to claim attorneys' fees incurred on appeal or on review must give notice of such intention in the time and manner set forth in this Rule.

(1) Notice that a party intends to claim attorneys' fees shall be made in the briefs on appeal or by written motion filed and served before oral argument or submission of the appeal. If a petition or cross-petition for review is filed, any party

* Additions to text are indicated by underscoring and deletions by ~~strikeouts~~.

intending to claim attorneys' fees shall give notice of such claim in the petition or cross-petition for review or the response thereto.

(2) A notice under this Rule must specifically state the statute, rule, decisional law, contract, or other provision authorizing an award of attorneys' fees. If a party fails to comply with this subsection, the appellate court may decline to award fees on that basis. This Rule only establishes the procedure for claiming attorneys' fees. It does not create any substantive right to attorneys' fees.

(3) The appellate court may consider a notice of a claim for attorneys' fees made in the superior court as satisfying the notice requirements of this Rule, as long as no party is prejudiced thereby.

(b) Costs of Briefs; Appendices Timing of Making Claims for Costs and Attorneys' Fees. ~~The allowance for the cost of the necessary copies of briefs and appendices shall be the amount actually and necessarily expended therefor. However, if the original of a brief or appendix is typed and the copies are either carbon copies or are prepared by a duplicating or copying process, then the sum of two dollars per page shall be presumed to be the maximum cost of typing and preparing one page of the original and all copies of the brief or appendix. A party entitled to costs or attorneys' fees may, within 10 days after the clerk has given notice that a decision has been rendered, file in the appellate court a verified itemized statement of costs or attorneys' fees on appeal or on review.~~

(c) Method of Establishing Claim for Attorneys' Fees. ~~(1) A claim for allowance of attorneys' fees shall be made in the briefs on appeal or by written motion filed and served before oral argument or submission of the appeal. If a petition or cross-petition for review is filed, a claim for allowance of attorneys' fees shall be made in the petition or cross-petition for review or the response thereto. All claims for attorneys' fees must specifically state the statute, rule, decisional law, contract, or other provision authorizing an award of attorneys' fees. If recovery of attorneys' fees is allowed by the court in its decision or order, a statement of the amount claimed for such fees may be included in the statement of costs prescribed by Rule 21(a). (2) The statement of the amount claimed for attorneys' fees shall set forth any factors counsel consider relevant to the determination of a reasonable fee. In addition, counsel shall also attach and submit an affidavit containing an itemized statement of hours, indicating the following:~~

- ~~(a)1) The date on which the service was performed;~~
- ~~(b)2) The time expended on such date;~~
- ~~(c)3) The nature of the service; and~~
- ~~(d)4) The identity of the persons performing the service.~~

(d) Costs of Briefs; Appendices. The allowance for the cost of the necessary copies

of briefs and appendices shall be the amount actually and necessarily expended therefor. However, if the original of a brief or appendix is typed and the copies are either carbon copies or are prepared by a duplicating or copying process, then the sum of two dollars per page shall be presumed to be the maximum cost of typing and preparing one page of the original and all copies of the brief or appendix.

(e) Objections to Claims for Costs and Attorneys' Fees; Procedure if No Objection. An adverse party may file objections to a statement of costs or attorneys' fees within 5 days after service of such statement. If no objections are filed, the clerk may tax the costs or attorneys' fees in accordance with these rules.

(f) Procedure if Objections are Filed. If objections are filed to a statement of costs or attorneys' fees, the party entitled to costs or attorneys' fees may reply within 5 days after the service of the objections. The amount of costs or attorneys' fees to be taxed may then be determined by the clerk, or by a member of the appellate court's legal staff designated by administrative order of the appellate court. A party aggrieved by such determination may apply to the appellate court for relief by motion, filed within ten days from the date of the order setting forth such determination, requesting the court to review the statement of costs, the objections thereto, and the reply to the objections. The appellate court shall then determine de novo the amount of costs or attorneys' fees to be taxed, without further hearing or argument.

(g) Ruling on Statement of Costs While Petition for Review is Pending. Notwithstanding the filing of a petition for review, the Court of Appeals shall retain jurisdiction to rule on a timely filed statement of costs including attorneys' fees. When the Court of Appeals awards costs or attorneys' fees against a party after the filing of a petition for review, such party may, by motion filed with the clerk of the Supreme Court, request that the Supreme Court review the parties' objections to the awarding of such costs or fees as a part of the pending petition for review proceeding. Any such motion shall include a copy of the order of the Court of Appeals granting costs or fees. The party in whose favor costs or attorneys' fees have been awarded may file a response within ten days after service of such a motion.

(e)(h) Clerk to Insert Costs in Mandate. The clerk shall include in the mandate an itemized statement of any attorneys' fees allowed and costs taxed on appeal pursuant to Rules 21(a), 21(c), and 21(f).

(f)(i) Award of Costs and Attorneys' Fees Upon Vacation, Reversal or Modification of Court of Appeals' Decision. If the Supreme Court vacates, reverses or modifies the Court of Appeals' decision on the merits, a party entitled to costs and/or attorney's fees may, pursuant to Rules 21(a) and 21(c), file with the Supreme Court a statement of costs and a claim for attorneys' fees incurred in the Court of Appeals. The parties may then file a response and reply thereto pursuant to Rules 21(a) and 21(c). The Clerk of the Supreme Court or the Supreme Court may either tax such costs and rule on such request or remand the case to the Court of Appeals for such a determination.

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Rule 23. Petition for Review

(a)-(b) [No change in text.]

(c) Form, Length and Contents. The petition and cross-petition for review shall comply with the provisions of Rule 6(c) unless such requirements are otherwise suspended and the parties shall be designated as in the Court of Appeals. Except by permission of the court (1) a petition for review prepared in a proportionately spaced typeface may not exceed 3500 words and may not have an average of more than 280 words per page, including footnotes and quotations; (2) a petition for review prepared in a monospaced typeface may not exceed 10 pages and may not have an average of more than 350 words per page including footnotes and quotations; and (3) a handwritten petition for review may not exceed 12 pages. The petition shall be accompanied by a certificate of compliance that states either (1) that the petition for review uses a proportionately spaced typeface of 14 points or more, is double spaced using a roman font and contains [blank] words, or (2) that the petition for review uses a monospaced typeface of no more than 10.5 characters per inch and does not exceed 10 pages, or (3) that the petition for review was handwritten and does not exceed 12 pages. A party preparing this certificate may rely on the word count of the processing system used to prepare the petition for review.

A copy of the Court of Appeals' decision shall accompany the petition. Where the Court of Appeals' decision is simply an order declining to accept jurisdiction of a special action, a copy of the Superior Court's decision from which the petition for special action was taken shall also accompany the petition. The petition and cross-petition shall contain concise statements of the following:

1-3. [No change in text.]

4. Whether the party claims entitlement to attorneys' fees, and, if so, the information required by Rule 21(a).

[No change in remaining text.]