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**IN THE SUPREME COURT  
STATE OF ARIZONA**

PETITION TO AMEND RULE  
21(c)(1), ARIZONA RULES OF  
CIVIL APPELLATE PROCEDURE

Supreme Court No. R-10-0033

**Comment of the State Bar of Arizona  
on Petition to Amend Rule 21(c)(1),  
Arizona Rules of Civil Appellate  
Procedure**

A petition has been submitted by four judges of the Arizona Court of Appeals, Division One, to amend Rule 21(c) of the Arizona Rules of Civil Appellate Procedure. The proposed amendment clarifies that, when a party requests fees from the appellate court, the party must cite the basis (statute, rule, decisional law, contractual basis, or other authority) authorizing the court to award fees.

For the reasons set forth below, the State Bar supports the proposed revisions to Civil Appellate Procedure Rule 21(c)(1), but recommends two editorial changes to clarify the meaning of the revised rule.

The purpose underlying the proposed revision is admirable. To the extent that Rule 21(c)(1) in its current form has encouraged litigants to merely reference the rule when requesting fees without citing the substantive law authorizing a fee award, it would assist the courts and the parties to make clear that fee requests should also cite the source of authority for a fee award.

1           However, some editorial changes would further clarify the proposed  
2 amended rule. First, to avoid duplicating certain language, the first sentence of  
3 the existing rule should be revised to remove any reference to the types of  
4 provisions that may authorize such a claim or request. Second, the inserted  
5 sentences specifying the types of provisions that must be included in support of  
6 the claim or request should become the penultimate sentences in the subsection, to  
7 make clear that the requirement to cite authority applies to all fee requests,  
8 including those associated with petitions or cross-petitions for review. Finally,  
9 “shall” should be changed to “must” in an effort to reduce the use of archaic or  
10 ambiguous language.

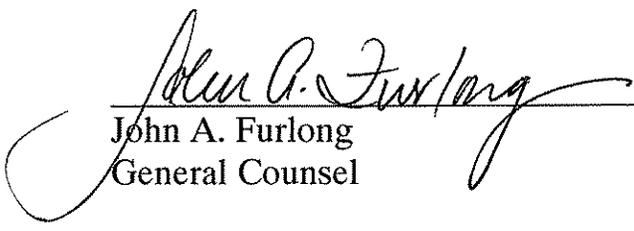
11           **(c) Claim for Attorneys’ Fees.** (1) A claim or request for allowance  
12 of attorneys’ fees made ~~When attorneys’ fees are claimed pursuant to~~  
13 ~~statute, decisional law or contract, a request for allowance of~~  
14 ~~attorneys’ fees in connection with~~ respect to fees incurred in the  
15 prosecution or defense of the an appeal or the ~~prosecution or defense~~  
16 ~~of the case in the~~ a superior court case must shall be made in the briefs  
17 on appeal; or by written motion filed and served prior to oral  
18 argument or submission of the appeal. If a petition or cross-petition  
19 for review is filed, a claim or request for allowance of attorneys’ fees  
20 must shall be made in the petition or cross-petition for review or the  
21 response thereto. All claims or requests for attorneys’ fees must  
22 specifically state the statute, rule, decisional law, contract, or other  
23 provision authorizing an award of attorneys’ fees. Citation to this rule  
24 is not, by itself, sufficient. If recovery of attorneys’ fees is allowed by  
25 the court in its decision or order, a statement of the amount claimed  
26 for such fees may be included in the statement of costs prescribed by  
Rule 21(a).

## CONCLUSION

27           The State Bar supports the petitioners’ proposed amendments to the Rules  
28 of Civil Appellate Procedure, and offers the suggestions provided above to further  
29 clarify the language of the proposed amendment.

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RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of May, 2011.

  
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John A. Furlong  
General Counsel

Electronic copy filed with the Clerk  
of the Supreme Court of Arizona  
this 3<sup>rd</sup> day of May, 2011,

By: Kathleen A. Lundgren

A copy was mailed to:  
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this 3<sup>rd</sup> day of May, 2011,

By: Kathleen A. Lundgren