

1 John A. Furlong, Bar No. 018356
2 General Counsel
3 STATE BAR OF ARIZONA
4 4201 N. 24th Street, Suite 200
5 Phoenix, Arizona 85016-6288
6 Telephone: (602) 252-4804
7 John.Furlong@staff.azbar.org

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO AMEND RULE 31(d)
OF THE ARIZONA RULES OF
THE SUPREME COURT

Supreme Court No. _____

**Petition to Amend Rule 31(d),
Arizona Rules of the Supreme Court**

Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, the State Bar of Arizona hereby petitions the Court to add an exemption to Rule 31(d)(11), Ariz. R. Sup. Ct., to allow a fulltime officer, partner, member or manager of a limited liability company, or employee to represent a legal entity in fee arbitration proceedings under the auspices of the State Bar of Arizona Fee Arbitration Committee, provided that: (1) the legal entity has specifically authorized such person to represent it in the particular matter; (2) such representation is not the person's primary duty to the legal entity, but is secondary or incidental to other duties relating to the management or operation of the entity; and (3) the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation. The specific language of the proposed amendment is set forth in Appendix A attached hereto.

1 **Background and Purpose of the Proposed New Rule**

2 For over forty years, the State Bar of Arizona Fee Arbitration Committee has
3 conducted arbitration proceedings to provide a simple and inexpensive forum for
4 resolving disputes regarding attorneys' fees between, among others, clients and
5 attorneys (where both parties have executed an agreement to be bound by the
6 arbitration on a form provided and approved by the State Bar of Arizona).

7 The Fee Arbitration Program is a free, voluntary, efficient, and cost-effective
8 program for resolving fee disputes for amounts over \$500 between Bar members and
9 their clients or, under certain circumstances, between Bar members. Both client and
10 attorney must agree to the arbitration in order for it to proceed. The files are processed
11 by the State Bar Fee Arbitration Committee Coordinator during the initial stages and
12 are then assigned to Fee Arbitration Committee Members to oversee, review, and
13 appoint arbitrators to hear cases or, if they so choose, to serve as arbitrators
14 themselves. The committee consists of sixty or more members, and each member
15 works independently on the matter(s) to which he/she is assigned. Each committee
16 member is expected to handle approximately five matters during the committee year.
17 The fee awards are in writing and require the arbitrator (or panel, if applicable) to set
18 forth findings of fact and a determination of the reasonableness of the fee. The rules
19 provide that the arbitrators may not award attorneys' fees or costs incurred in the fee
20 arbitration. Rule VII.B., Rules of Arbitration of Fee Disputes. The decisions of the
21 arbitrator(s) are final and binding and are subject to only limited appeal through the
22 Superior Court system under the Revised Uniform Arbitration Act, A.R.S.
23 §§ 12-3022 through 12-3025.

24 The question has been raised as to whether a legal entity may be represented by
25 a fulltime officer, partner, member or manager of a limited liability company, or
26 employee in these proceedings. In order to ensure that the State Bar may continue to

1 provide fee arbitration services consistent with the Core Values that guide the work of
2 the Bar and not proceed in a manner that might be perceived as allowing the unlawful
3 practice of law by those representatives of clients who choose to utilize certain
4 categories of individuals to represent the legal entity in the fee arbitration, an
5 exception to Supreme Court Rule 31(d) allowing a legal entity to be represented by a
6 fulltime officer, partner, member or manager of a limited liability company, or
7 employee is being requested. At the Fee Arbitration Committee's semi-annual
8 meeting on September 16, 2011, there was unanimity that the committee should
9 appoint a subcommittee to address this issue and seek an amendment to Rule 31(d)
10 allowing legal entities to be represented by other than an attorney authorized to
11 practice in this State. A subcommittee was formed to address this issue and, as part of
12 the process of submitting this request, the entire committee was polled as to whether
13 they supported the suggested rule amendment. Ninety-six percent of those
14 responding voted in favor of it.

15 The recommended amendment will have the effect of enhancing the legal
16 profession in the eyes of the public, particularly those who have sought legal
17 representation on behalf of legal entities and found themselves in a dispute with legal
18 counsel over the reasonableness of attorneys' fees and costs which, if the
19 recommended amendment is not approved, would be required to retain legal counsel
20 and incur fees in order to dispute the fees charged by their prior counsel. If legal
21 entities are required to retain counsel to represent them in the fee arbitration process,
22 they derive no benefit from utilizing the program; and the dispute will either not be
23 arbitrated or such dispute will be filed in Superior Court, and expend the already
24 scarce court resources.

25 The recommended rule change would also have the secondary effect of
26 preventing an attorney who volunteers her or his services as a fee arbitrator from

1 inadvertently assisting in the unauthorized practice of law if circumstances arise
2 where, despite the best efforts of State Bar of Arizona staff, a legal entity appears at
3 the hearing without counsel.

4 For the reasons set forth above, the State Bar of Arizona respectfully
5 petitions this Court to amend Rule 31(d) of the Arizona Rules of the Supreme Court
6 as set forth in Appendix A attached hereto.

7 RESPECTFULLY SUBMITTED this 22ND day of December, 2011.

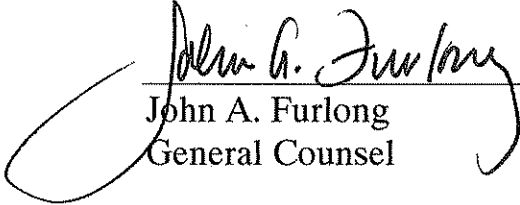
8

9

10

11

12


John A. Furlong
General Counsel

13

14

15

Electronic copy filed with the Clerk
of the Supreme Court of Arizona this
22nd day of December, 2011.

16

17

By: Kathleen A. Lundgren

18

19

20

21

22

23

24

25

26

APPENDIX A

Proposed Rule Changes

(Petitioner's proposed changes shown with additions identified by underscoring and deletions identified by "~~strike-through~~").

APPENDIX A

Rules of the Supreme Court

Rule 31. Regulation of the Practice of Law

(a) – (c) [No change in text.]

(d)(1) – (10) [No change in text.]

(d)(11) Unless otherwise specifically provide for in this rule, in proceedings before the Office of Administrative Hearings, or in fee arbitration proceedings conducted under the auspices of the State Bar of Arizona Fee Arbitration Committee, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

(d)(12) – (29) [No change in text.]