

APRIL TERM, A.D. 1981

IN THE MATTER OF ADOPTING)
RULE FOR THE RESOLUTION OF)
FEE DISPUTES.)

IN THE SUPREME COURT
STATE OF WYOMING

MAY 21 1981

ORDER ADOPTING RULE
FOR THE RESOLUTION OF FEE DISPUTES

CLERK OF COURT

M. J. Leonard
DEPUTY

The Wyoming State Bar having adopted and authorized its officers to recommend approval by this Court of a Rule for the Resolution of Fee Disputes, a copy of which is attached hereto, and the Court after careful consideration, it is

ORDERED that such Rule for the Resolution of Fee Disputes adopted by the Wyoming State Bar, be and is approved as Rule XXI of the Disciplinary Code for the Wyoming State Bar, and that it be published in Wyoming Court Rules and the advance sheets of Pacific Reporter, Second Series, to become effective sixty days after publication in the advance sheets, Pacific Reporter, Second Series, and shall be spread at length upon the journal of this Court.

FURTHER ORDERED that each member of the Wyoming State Bar be furnished by the Wyoming State Bar with an advance copy of this Order and new Rule XXI not later than July 1, 1981.

IT IS FINALLY ORDERED that the committee promulgating Rule XXI and the Wyoming State Bar be and are commended for their work.

May 21, 1981.

By the Court

Robert R. Rose, Jr.
ROBERT R. ROSE, JR.
Chief Justice

Disciplinary Code
for the
Wyoming State Bar

Rule XXI. Resolution of fee disputes.

(a) Definitions.

As used in this rule:

(1) "Committee" means the Committee on Resolution of Fee Disputes of the Wyoming State Bar.

(2) "Executive Council" means the executive council of the Committee on Resolution of Fee Disputes.

(3) "Chairman" means the chairman of the Committee on Resolution of Fee Disputes and its executive council.

(4) "Panel" means the members of the Committee on Resolution of Fee Disputes assigned to arbitrate a particular dispute as provided in these rules.

(5) "Panel chairman" means the chairman of a panel as defined by sub-paragraph (4) above.

(6) "Assigned member" means the member of the Committee on Resolution of Fee Disputes assigned to make a preliminary investigation of a complaint, to represent a complainant at arbitration hearings, to institute suits for refund of any portion of a fee paid determined to be excessive and to defend any suit by an attorney seeking to collect any portion of a fee not

yet paid determined to be excessive as provided in these rules.

(7) "Grievance Committee" means the grievance committee of the Wyoming State Bar.

(8) "President" means the president of the Wyoming State Bar.

(9) "Executive Director-Secretary" means the Executive Director-Secretary of the Wyoming State Bar.

(10) "Party" means all persons who have executed a consent to binding arbitration.

(b) Appointment of committee members.

(1) The Committee on Resolution of Fee Disputes shall consist of twenty-seven (27) members to be appointed by the president for three (3) year terms. One (1) member shall be appointed from each of the twenty-three (23) counties of the state, with the exception of Laramie County, Natrona County, Sheridan County and Sweetwater County, from each of which two (2) members shall be appointed. Initially, one-third of the members of the committee shall be appointed for a period of one year, one-third for a period of two years and one-third for a period of three years. As each member's term of office on the committee expires, his successor shall be appointed for a period of three (3) years. The term of any member which expires while an arbitration is pending before him or before a panel of which he is a member shall be extended until such

arbitration is concluded, but such extension shall not interfere with the president's power to appoint a successor to the committee. The president shall appoint the chairman of the committee and four (4) other members from the committee on the basis of geographical representation from the northeast, northwest, southwest, southeast and central part of the state which shall constitute the Executive Council of the committee.

(2) Members of the committee should be selected to provide representation from a broad spectrum of the Bar from the standpoint of both firm organization (i.e. large firms, small firms and sole practitioners) and types of practice (i.e. general practice, litigation practice, real estate and natural resource law, criminal practice, etc.). Committee members should be experienced in the practice of the law, and no member should have practiced for less than five (5) years.

(3) The chairman shall select from the committee, as the need arises, panels of three (3) members each, taking into consideration the geographical area in which a fee dispute arises. The chairman of the committee shall designate one (1) member of each such panel as panel chairman.

(c) Executive council.

(1) The executive council shall be charged with the responsibility of overseeing the work of the committee,

reviewing recommendations for dismissal of complaints, developing forms to implement the procedure prescribed herein and may formulate rules of procedure not inconsistent with these rules. The executive council shall review recommendations for dismissal of complaints monthly and may do so in panels of three (3) designated by the chairman for that purpose.

(2) The Executive Director-Secretary of the Wyoming State Bar shall act as secretary to the committee and to the several panels. The Executive Director-Secretary shall not be responsible for attending panel hearings, nor for providing secretarial or recording service at or during such hearings. The Executive Director-Secretary shall keep and maintain records of the petitioners, respondents, proceedings, determinations and awards of the committee and its' respective panels, and otherwise maintain the records thereof.

(d) Jurisdiction.

The committee shall have jurisdiction over any disagreement concerning the fee paid, charged or claimed for legal services rendered by an attorney licensed to practice in this state where there exists an expressed or implied contract establishing an attorney-client relationship from which no fee can be determined and the submission to the committee is made by the person or firm allegedly liable for the payment of the fee in dispute. Disputes over which, in

the first instance, a court has jurisdiction to fix the fee, or which involve services which constitute a violation of the Code of Professional Responsibility, are specifically excluded from the committee's jurisdiction. After the petition is filed with the Executive Director-Secretary of the Wyoming State Bar, the Chairman of the Grievance Committee shall make an initial determination that no ethical violation is stated in the petition. If an ethical violation is stated, the petition shall be referred to the Grievance Committee of the Wyoming State Bar. It shall be the duty of the Committee on Resolution of Fee Disputes to encourage the amicable resolution of fee disputes falling within its jurisdiction and, in the event such resolution is not achieved, to arbitrate and finally determine such disputes.

(e) Processing complaints.

(1) Requests for committee consideration of fee disputes shall be submitted to the committee addressed to the Wyoming State Bar. The request need not follow any specific form but should state with clarity and brevity the facts with respect to the fee dispute, the names and addresses of the parties to the dispute and those persons who may be directly affected by the outcome. The Executive Director-Secretary shall request the complainant to execute a consent to binding arbitration, on the form furnished by the committee, together with a twenty-five dollar (\$25.00) administration fee. If the complainant fails or

refuses to execute such consent and pay said fee, the matter shall be closed.

(2) Upon receipt, a request shall be immediately acknowledged; and, then forwarded to the chairman of the Grievance Committee for a determination of no ethical violation; and, then forwarded to the chairman of the committee for assignment to the assigned member. If, at the beginning of the year, the chairman of the committee has established a list of members of the committee in each area of the state to whom requests are to be forwarded in rotation, all requests received shall be sent directly to the assigned member next in rotation. The assigned member shall be disqualified from participating in the three (3) member panel in any manner in proceedings involving the request assigned to its member.

(3) Upon the completion of any preliminary investigation he deems appropriate, the assigned member shall determine whether, in his judgment, a complaint has been stated within the jurisdiction of this rule. In doing so, the assigned member shall consider whether there is an agreement, orally or in writing, as to fees and whether the fees charged are in conformance with that agreement. If the assigned member determines that a complaint should be dismissed without further action, either because there appears to be no just ground for the complaint or dispute, or the

matter is moot, or if for some other reason deemed adequate, jurisdiction is, or becomes, unwarranted, he shall prepare a brief written report setting forth the facts and his recommendation for submission to the next meeting of the Executive Council of the Committee. If the council concurs in the assigned member's recommendation, the matter shall be closed and the complainant so advised. If the council disapproves the assigned member's recommendation, the matter shall be reassigned to a new assigned member for further proceedings.

(4) If, following his preliminary investigation, the assigned member concludes that a complaint has been stated within the jurisdiction of this rule, the assigned member shall notify the complainant and the attorney involved that the committee has assumed jurisdiction but will delay any further steps until the expiration of a thirty (30) day period during which the parties are urged to exert their best efforts to reach an amicable resolution of their dispute.

(5) If the parties do not themselves settle the dispute within the thirty (30) day period, the assigned member shall send a copy of the complainant's allegations to the attorney involved, together with a request for his consent to binding arbitration on the form furnished by the committee and, in the event that the attorney so consents, a request for formal answer

to the allegations for submission to the arbitration panel in order that it be advised of the issues between the parties. At the time that this request is submitted to the attorney, the assigned member shall advise him that, in the event the attorney fails or refuses to consent to binding arbitration, the arbitration panel to which the matter is assigned will proceed to conduct an ex-parte hearing and, if it finds that the client's allegations are justified, will direct the assigned member to represent the complainant in a suit for the refund of any portion of the fee paid determined to be excessive or to resist any suit by the attorney seeking to collect any portion of the fee not yet paid determined to be excessive.

(f) Arbitration.

(1) Upon receipt of the attorney's consent to binding arbitration, or his refusal or the expiration of the time fixed for the attorney's submission of his consent to binding arbitration, whichever the case may be, the matter shall be assigned to a hearing panel selected by the chairman composed of one (1) member of the committee if the amount in dispute is one thousand dollars (\$1,000) or less, and three (3) member panel if the amount in dispute is more than one thousand dollars (\$1,000).

(2) Each party may challenge, without cause, not more than two (2) members of the panel, unless the

matter is to be heard by a single arbitrator, in which event, each party may challenge not more than one arbitrator selected. Any challenge must be exercised within five (5) days after the challenging party signs the arbitration agreement, and such challenges must be made by written notice to the office of the Wyoming State Bar. When the office of the Wyoming State Bar has on file an arbitration agreement signed by both parties and notice, if any, of challenges to the panel, the chairman shall select from the list of unchallenged members of the committee the arbitrator or arbitrators to hear the dispute.

(3) It shall be the obligation of any member so designated to serve as arbitrator to disclose to the chairman of the committee any reasons why he cannot ethically or conscientiously serve. In the event that a member so designated to serve declines or is unable to serve, the chairman shall select another committee member who may be eligible. In designating panel members, the chairman shall strive to rotate selection of panel members in an equitable manner.

(4) If at the time set for hearing before a three (3) member panel, all three (3) members are not present, the chairman of the panel, or in the event of his unavailability, the chairman of the committee, in his sole discretion, shall decide either to postpone the hearing, or, with the consent of the parties, to

proceed with the hearing with one (1) member of the panel as the sole arbitrator, in which case he shall also designate the member of the panel who will hear the case as sole arbitrator. In no event will a hearing be conducted by or proceed with two (2) arbitrators.

(5) If any member of the three (3) member panel dies or becomes unable to continue to act while the matter is pending and before an award has been made, the proceedings to that point shall be declared null and void and the matter assigned to a new panel for rehearing unless the parties, with the consent of the panel chairman, or in the event of his unavailability, the chairman of the committee, consent to proceed with the hearing with a remaining member of the panel as the sole arbitrator.

(6) If all the parties to a controversy so agree, they may waive oral hearings and may submit their contentions in writing, together with exhibits, to the arbitrator or arbitrators assigned, who may then determine the controversy on the basis of such documents. However, the arbitrators may nevertheless, if they deem it desirable, require oral testimony of any party or witness, after due notice to all parties.

(7) The members of the committee selected as arbitrators of any dispute shall be vested with all the powers, and shall assume all the duties granted and

imposed upon neutral arbitrators by the Wyoming Uniform Arbitration Act, W.S. 1-36-101 through 119, not in conflict with these rules.

(8) The single arbitrator or panel assigned shall hold a hearing within thirty (30) days after the receipt of the assignment, and shall render their award within fifteen (15) days after the close of the hearing. The award of the panel shall be made by a majority of the panel when heard by three (3) members, or by the one (1) member of the panel who was designated as sole arbitrator, as provided herein.

(9) The chairman of the panel, or the single arbitrator, assigned, as the case may be, shall fix a time and place for the hearing and shall cause written notice thereof on the form furnished by the committee and served personally or by registered or certified mail on the parties to the arbitration and on the other members of the panel not less than twenty-one (21) days before the hearing. A party's appearance at a schedule hearing shall constitute a waiver on his part of any deficiency in respect to the giving of notice of the hearing.

(10) An attorney who has failed to consent to binding arbitration shall not be deemed a party, shall not be entitled to notice of the hearing and shall not be eligible to participate in the hearing.

(11) The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing. Any party to an arbitration has the right to be represented by an attorney at the hearing or at any stage of the arbitration proceeding. The complainant shall be represented by the assigned member unless he exercises his right to retain counsel of his own choice. Any party may also have a hearing before a panel reported by a certified shorthand reporter at his expense by written request presented to the Executive Director-Secretary at least fourteen (14) days prior to the date of the hearing. The party requesting the transcript of the proceeding shall deposit with the reporter an amount sufficient to pay his fees, said amount shall be determined by the reporter. In the event of such request, any other party to the arbitration shall be entitled to acquire at his own expense a copy of the reporter's transcript of the testimony by arrangements made directly with the reporter. When no party to the arbitration requests that the hearing be reported, and the panel or sole arbitrator deems it necessary to have a hearing reported, the panel or sole arbitrator may employ a certified shorthand reporter for such purpose if authorized to do so by the chairman. The written notice of the hearing sent to the parties shall advise

them of these rights.

(12) All parties shall have an absolute right to attend all hearings. The exclusion of other persons or witnesses waiting to be heard shall rest in the discretion of the arbitrators.

(13) Adjourned dates for the continuation of any hearings which cannot be completed on the first day shall be fixed for such times and places as the arbitrators may select with due regard to the circumstances of all the parties and the desirability of a speedy determination. Upon request of a party to the arbitration for good cause, or upon its own determination, the panel may postpone the hearing from time to time.

(14) The chairman of the panel shall preside at the hearing. The panel shall rule on the admission and exclusion of evidence and on questions of procedure, and shall exercise all powers relating to the conduct of the hearing.

(15) The arbitrators may request opening statements and may prescribe the order of proof. In any event, all parties shall be afforded full and equal opportunity for the presentation of any material evidence.

(16) On request of any party to the arbitration or of any member of the panel, the testimony of witnesses shall be given under oath. Where so requested, an

officer authorized to administer oaths shall administer oaths to witnesses testifying at the hearing.

(17) If either party to an arbitration, who has been duly notified, fails to appear at the hearing, the panel may hear and determine the controversy upon the evidence produced, notwithstanding such failure to appear, and enter a binding award.

(18) Before closing the hearing, the arbitrators shall specifically inquire of all parties whether they have further evidence to submit in whatever form. If the answer is negative, the hearing shall be declared closed and a notation to that effect made by the arbitrators as well as the date for submission of memoranda or briefs, if requested by the arbitrators.

(19) The hearing may be reopened by the arbitrators on their own motion or on application of a party and with the approval of the arbitrators at any time before the award is signed and filed.

(20) In the event of the death or incompetency of a party to the arbitration proceeding, prior to the close of the hearing, the proceeding shall be abated without prejudice to either party to proceed in a court of proper jurisdiction to seek such relief as may be warranted. In the event of death or incompetency of a party after the close of the hearing but prior to a decision, the decision rendered shall be binding upon

the heirs, administrators or executors of the deceased and on the estate or guardian of the incompetent.

(g) The award.

(1) The decision of the arbitrators shall be expressed in a written award signed by all of them. If there is a dissent, it shall be signed separately but the award shall be binding if signed by the majority of the arbitrators. Unless the submission or contract provides otherwise, the arbitrators may grant any remedy or relief they deem proper, including a direction for specific performance. An award may also be entered on consent of all the parties. Once the award is signed and filed the hearing may not be reopened.

(2) The award shall state only the amount of the award, if any, and the terms of payment if applicable.

(3) The arbitrators may include in the award a direction for payment of costs or other expenses, or a portion thereof, related to the proceedings but not for fees to the arbitrators or counsel.

(4) The original and four (4) copies of the award shall be signed by the members of the panel concurring therein. The chairman of the panel shall forward said award, together with the entire file, to the Executive Director-Secretary, who shall thereupon, for and on behalf of said panel, serve a signed copy of the award on each party to the arbitration, personally or by

registered or certified mail, and notify the chairman of the committee that the matter has been concluded.

(h) Enforcement of the award.

(1) In any case in which both the complainant and the attorney signed a consent to binding arbitration, any award rendered may be enforced by any court of competent jurisdiction.

(2) In the event of an award to the complainant in a matter in which the attorney has not executed a consent to binding arbitration, involving a fee which has already been paid, the assigned member shall, if the complainant consents, institute suit on behalf of the complainant against the attorney for the refund of any portion of the fee found to be excessive.

(3) In the event of an award to the complainant in a matter in which the attorney had not executed a consent to binding arbitration, involving any portion of a fee claimed but not paid, the assigned member shall, if the complainant consents, represent the complainant in defense of any suit by the attorney seeking to collect any portion determined to be excessive. In the event of such award, the assigned member shall also institute suit to vacate any lien asserted by the attorney on the basis of any such fee charged determined to be excessive upon any property of the complainant. The assigned member shall, immediately following the entry of an award in such circumstances and with the consent

of the complainant, notify the attorney of the award and of his appearance as counsel for the complainant.

(4) In any lawsuit by or against the complainant in which he is represented by the assigned member, no fee shall be charged for the assigned member's services but costs awarded shall be deducted from any recovery.

(5) If the award shall determine that the participating attorney or attorneys who consented to binding arbitration are not entitled to any portion of the disputed fee, service of a copy of such award on said attorney or attorneys shall:

(i) terminate all claim and interest of the participating attorney or attorneys against the participating client or clients in respect to the subject matter of the arbitration;

(ii) terminate all right of such attorney or attorneys to retain possession of any documents, records or other properties of such client or clients pertaining to the subject matter of the arbitration then held under claim of attorney's lien or for other reasons;

(iii) terminate all right of such attorney or attorneys to oppose the substitution of one or more other attorneys designated by such client or clients in any pending litigation pertaining to the subject matter of the arbitration.

(6) If the award shall be in favor of an attorney or attorneys who submitted their consent to binding arbitration, it shall fix the amount or amounts to which he or they are found to be entitled.

(i) The payment of that amount or amounts by the client or clients shall constitute a complete satisfaction of all claims against him or them.

(ii) If the client does not comply in any respect with the arbitration award, the attorney may make application to a court of competent jurisdiction for a judicial determination of means necessary to secure compliance with the award.

(iii) If such a judicial determination shall be made and the terms thereof be promptly fulfilled by the client or clients, such compliance shall entitle the client to the relief specified in paragraph (h)(5)(ii) and (iii).

(i) Expenses.

The expenses of members of the committee, as well as the expenses of the assigned member including a reasonable attorney fee, and other expenses incurred in the implementation or administration of this rule shall be paid by the committee out of funds allocated to them by the Wyoming State Bar.

(j) Confidentiality.

With the exception of the award itself, all records, documents, files, proceedings and hearings pertaining to

arbitrations of any fee dispute under this rule in which both the complainant and the attorney have consented to be bound by the result, shall not be opened to the public or any person not involved in the dispute.

(k) Preservation of records.

(1) The Executive Director-Secretary shall maintain permanent records of all matters processed by the committee and the disposition thereof. This paragraph shall not be construed to require the permanent retention of correspondence, memoranda, transcripts, or other similar documents which underlie the final disposition of the matter by the committee.

(2) Where it is determined that a complaint is not meritorious and is dismissed, the Executive Director-Secretary immediately thereafter shall dispose of all records and documents relating thereto and expunge from any committee minutes any reference thereto.

(3) Where an award is made pursuant to paragraph (g) above, the Executive Director-Secretary shall dispose of all records and documents relating thereto six (6) years after the date of the award, if no other complaints were filed against the respondent during the six (6) year period.