IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 1989

IN THE SUPREME COURT
STATE OF WYOMING
FILED

MAY 15 1989

JERRILL B. CA... CLERK
by ...

IN THE MATTER OF THE ADOPTION OF)
RULES FOR RESOLUTION OF FEE DISPUTES)

ORDER ADOPTING RULES

The Court having deemed it necessary and proper to adopt the Rules for Resolution of Fee Disputes attached hereto and incorporated herein, it is

ORDERED that the Rules for Resolution of Fee Disputes, as attached, be adopted in their entirety; and it is

FURTHER ORDERED that the adopted Rules for Resolution of Fee Disputes be published in the Advance Sheets of the Pacific Reporter and thereafter in the Wyoming Reporter; that said adopted rules shall become effective sixty (60) days after publication in the Advance Sheets of the Pacific Reporter, and thereupon be spread at length on the journal of this Court.

Dated this 11th day of May, 1989.

BY THE COURT:

G. JOSEPH CARDINE
Chief Justice

RULES FOR RESOLUTION OF FEE DISPUTES.

Rule 1. Authority. These rules on resolution of fee disputes are promulgated pursuant to the authority of W.S. 5-2-118.

Rule 2. Scope.

(a) An application under these rules may be presented for resolution of a legal fee dispute by:

(i) the person or entity allegedly liable for payment; or

(ii) the claimant attorney; or

(iii) contesting law firms where the issue in dispute is a division among them of billed fees and costs.

(b) Excluded from the scope or authority of these rules are:

(i) fees which in the first instance are within the jurisdiction of a court to determine or approve; and

(ii) fees for claimed legal services which constitute a violation of the rules of professional conduct.

Rule 3. Definition and Duties.

(a) "Committee" is the Committee on Resolution of Fee Disputes of the Wyoming State Bar. It shall be the policy of the Committee to encourage the amicable resolution of fee conflicts falling within its jurisdiction and, in the event such resolution is not achieved, its duty to resolve the dispute by determinate decision.

(b) "Chairman" is the Chairman of the Committee on Resolution of Fee Disputes who shall perform such duties as set forth in this rule and oversee the work of the Committee.

(c) "Panel" is the members of the Committee on Resolution of Fee Disputes assigned to decide a particular dispute as provided in these rules.

(d) "Panel chairman" is the chairman of a panel as defined by subparagraph (c) above.

(e) "Grievance committee" is the Grievance Committee of the Wyoming State Bar.

(f) "President" is the President of the Wyoming State Bar.

(g) "Executive Director" is the Executive Director of the Wyoming State Bar.

(h) "Complainant" is the person who files the fee resolution petition.

(i) "Respondent" is the person against whom the fee resolution petition is filed.

(j) "Final Billing" means the first bill submitted by the attorney to his client after the case is closed and after the work to complete the case has been performed for which the attorney was originally hired. In a contingent fee case, the final billing means the statement of distribution which delineates the gross or net recovery distribution on behalf of the client, the costs and fees incurred as the document and itemization is to be provided pursuant to Wyoming Supreme Court rules governing contingent fees for the members of the Wyoming State Bar.

Rule 4. Appointment of Committee members and hearing panels.

(a) The Committee on Resolution of Fee Disputes shall consist of twenty-seven (27) members to be appointed by the President for three-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 (1/3) of the members of the Committee shall be appointed for a period of one (1) year, one-third for a period of two (2) years and one-third for a period of three (3) years. As the term of office of each member expires, his successor shall be appointed for a period of three (3) years. The term of any member which expires while a dispute is pending before a panel of which he is a member shall be extended until such dispute is concluded, but such extension shall not delay the appointment of a successor member to the Committee.

(b) The President shall appoint the Chairman of the Committee from its membership to serve for a term of one (1) year with right of reappointment for one (1) additional year.

(c) Members of the Committee shall 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.). General

practice of law for not less than five (5) years is required for appointment.

(d) When a fee resolution petition is filed, the Chairman shall designate members for a hearing panel for that dispute with selection considerations to include geographical factors. In case designations, the Chairman shall also strive to rotate selection in an equitable manner to permit participation by as many members of the Committee as may be provident in consideration of the geographical factors involved. If the membership of the panel is more than one (1) person, the Chairman shall also designate the person among the three (3) named who shall serve as Chairman.

(i) The panel will consist of one (1) member if the amount in dispute is one thousand dollars ($1,000) or less, and three (3) members if a greater sum is claimed.

(ii) Designated members shall disclose immediately following appointment whether reasonable cause exists ethically or conscientiously for them to decline to serve. In honoring the declination, the Chairman shall designate another member.

(iii) 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 terminated and the matter reassigned to a de novo hearing, 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 only the two (2) remaining panel members.

Rule 5. Executive Director of the Wyoming State Bar. The Executive Director shall act as secretary to the Committee and to the several panels, although not responsible for attending panel hearings, nor for providing secretarial or recording service for the hearings. The Executive Director shall keep and maintain records of the complainants, respondents, proceedings, determinations and awards of the Committee and its respective panels, and otherwise maintain the records thereof.

Rule 6. Submission of Disputes.

(a) Any client may, within 90 days of receipt of a final billing by an attorney for legal services (limitation period) contest the charged fee by filing a request for fee dispute resolution (fee resolution petition) with the Committee at the office of the Wyoming State Bar, Cheyenne, Wyoming.

(b) If a petition is filed within the limitation period, the creditor-attorney shall participate in the proceedings and

be subject to the final decision made. If a petition is filed after the limitation period, the attorney may elect whether or not to participate within fifteen (15) days of receipt of notice of filing of the petition.

(c) If within the limitation period the attorney files suit for fee collection, the client may elect to file a fee resolution petition. Upon notice to the court where the litigation is pending the collection lawsuit shall be dismissed without prejudice.

(d) After the limitation period expires, an attorney may elect to collect a claimed unpaid fee by either: (1) filing a petition for fee resolution hereunder or (2) institution of a lawsuit in a court of competent jurisdiction.

(e) If an attorney files a petition under these rules to collect an unpaid fee, the client may reject application of these rules to the dispute by moving to dismiss the petition within fifteen (15) days after receipt of notice of the filing of the petition. Said motion, if timely filed, shall be granted by the Committee. Failure of the client to make such a timely motion shall constitute an irrevocable election by the client to be subject to the jurisdiction of the Committee and any proceeding hereunder.

Rule 7. Matters to be Considered by the Committee.

(a) The Committee shall consider any disagreement concerning the fee paid or costs incurred when charged or claimed for legal services rendered by an attorney licensed to practice in this state where:

(i) there exists an expressed or implied contract establishing an attorney-client relationship from which no fee can be determined; or

(ii) a contingent fee contract is concerned, and the reasonableness of the fee is in dispute as provided by Rule 5(f), Rules Governing Contingent Fees for Members of the Wyoming State Bar; or

(iii) there is a written fee agreement between the parties.

Rule 8. Processing petitions for resolution of fee disputes.

(a) Petitions for Committee consideration of fee disputes shall be submitted to the Committee addressed to the Wyoming State Bar. The petition 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.

(b) The Executive Director shall request the complainant to execute the form furnished by the Committee, which acknowledges an election to proceed under this rule and the binding effect of the determination, together with a twenty-five dollar ($25.00) administration fee. If the complainant fails or refuses to execute such acknowledgment and pay the fee, the matter shall be closed.

(c) Upon receipt of petition for resolution of fee dispute, a copy of the petition will be forwarded to the respondent. If the respondent is an attorney licensed to practice in the State of Wyoming, notice shall also be given that a) disposition of the fee dispute has no effect upon whether or not a violation of the Rules of Professional Conduct may have occurred, and b) it is the duty of the panel to promptly report any alleged or suspected violation to the Grievance Committee.

(d) Upon receipt of petition for resolution of fee dispute, the Executive Director shall forward a copy of the petition to the Chairman, who shall proceed in accordance with Rule 4(d).

Rule 9. Proceedings exempt from W.A.P.A. Proceedings under these rules are exempt from the Wyoming Administrative Procedure Act (W.S. 16-3-101 through 115) pursuant to W.S. 16-3-101(b)(i).

Rule 10. Recording of proceedings. The panel chairman shall provide for an electronic transcription of the entire hearing unless in lieu thereof either of the contestants requests and arranges for a court reporter to transcribe the proceedings.

Rule 11. Decision of the panel.

(a) The panel shall render an award within fifteen (15) days from the date that the hearing was completed.

(b) When the panel consists of three (3) members, the award shall be made by all members or a majority thereof.

Rule 12. Terms of the award.

(a) The decision of the panel 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 a majority of the panel. Unless the petition or contract provides otherwise, the panel may grant any remedy or relief deemed proper, including a direction for specific performance. An award may also be entered on consent of all the parties.

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

(c) The panel 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 be paid to the panel or assigned member.

(d) The original and four (4) copies of the award shall be signed by the members of the panel concurring therein. The panel chairman shall authenticate the award, certify the record and forward the documents for filing by the Executive Director, who shall thereupon, for and on behalf of the panel, serve a signed copy of the award on each party, personally or by certified mail, and notify the Chairman of the Committee that the matter has been concluded.

(e) If during the course of the proceedings, the panel learns of circumstances which are alleged or suspected to constitute a violation of the Rules of Professional Conduct, such information shall promptly be forwarded to the Grievance Committee.

Rule 13. Death or disability of a party prior to entry of decision. In the event of the death or incompetency of a party to the hearing, 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.

Rule 14. Judicial Review.

(a) A petition for review in the form provided by Rule 12, Rules of Appellate Procedure entitled judicial review of administrative action may be requested by filing in the office of the state district clerk of court having venue of the underlying litigation if a lawsuit was involved and, if not, having venue of the county where the hearing of the panel was conducted.

(b) In the event that the underlying litigation was a federal court proceeding, venue will exist for judicial review in the state district court where the panel hearing was conducted.

(c) A petition for judicial review shall be filed within thirty (30) days following service of the written decision upon the parties. Within ten (10) days after the receipt of

notice of the filing of petition for review, the certified record of the hearing and proceedings shall be filed with the court by the Executive Director.

(d) At the date set for hearing, the district court shall review the record, which if electronically recorded, shall be transcribed by the petitioner for review. If before the date set for hearing application is made to the court for leave to present additional evidence and is shown to the satisfaction of the court that additional evidence is material and there was good reason for failure to present it in the proceeding before the Committee on Resolution of Fee Disputes, the court may order that additional evidence be taken at the hearing. The court may receive written briefs and hear oral arguments in its presentation and fix a briefing schedule.

(e) The court may enter judgment to affirm or reverse or may remand the case to the Committee for further proceedings. The decision of the court shall constitute a final judgment for review by the Wyoming Supreme Court pursuant to W.R.A.P. 13.

Rule 15. Enforcement of award upon appeal to the district court.

(a) Any award rendered may be enforced by any court of competent jurisdiction.

(b) If the award shall determine that the participating attorney or attorneys are not entitled to any portion of the disputed fee, service of a copy of such award on the 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 hearing;

(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 hearing 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 (1) or more other attorneys designated by such client or clients in any pending litigation pertaining to the subject matter of the hearing.

(c) If the award shall be in favor of an attorney or attorneys, the hearing panel 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 relative to the subject matter of the hearing.

(ii) 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 or clients to the relief specified in paragraph (2)(i), (ii) and (iii).

Rule 16. Enforcement of award in the event no administrative appeal or review is taken to the district court. Following entry of an order of award by the panel chairman as duly filed with the Executive Director and after the time has expired for judicial review in the case, if the client has not paid the award, claimant-attorney may proceed by filing a certified copy of the award with the clerk of the district court as a binding judgment in the same fashion and with the same effect as provided for judgments of the justice of the peace by W.S. 1-17-306, including the right to have execution and writs of garnishment issued thereon.

Rule 17. Expenses. The expenses of members of the Committee, as well as the expenses of the assigned member, 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.

Rule 18. Confidentiality. With the exception of alleged or suspected violation of the Rules of Professional Conduct referred to the Grievance Committee, no confidentiality exists in the resolution of fee disputes.

Rule 19. Preservation of records.

(a) The Executive Director 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.

(b) The Executive Director shall dispose of all records and documents relating to a dispute six (6) years after the date of the decision of the Committee, if no other applications for resolution of fee disputes were filed against an attorney during the six-year period.

Repealing Clause. These rules supersede and repeal Rule XXIII of the Disciplinary Code for the Wyoming State Bar.