

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1996

IN THE SUPREME COURT  
STATE OF WYOMING  
FILED

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JUDY PACHECO, CLERK  
Carel Thompson  
by DEPUTY

*In the Matter of the Repeal of the  
Rules for Resolution of Fee Disputes  
Adopted by Order Dated May 11,  
1989, and Adopting Revised Rules  
for the Resolution of Fee Disputes* )  
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**ORDER REPEALING THE RULES FOR RESOLUTION OF FEE DISPUTES  
ADOPTED BY ORDER DATED MAY 11, 1989, AND  
ORDER ADOPTING REVISED RULES FOR RESOLUTION OF FEE DISPUTES**

*This matter came before the Court upon the recommendation of the Committee on Resolution of Fee Disputes of the Wyoming State Bar that the Rules for Resolution of Fee Disputes adopted by order dated May 11, 1989, be repealed and that revised rules be adopted. The Court has fully considered that recommendation and finds that it should be approved; it is therefore,*

**ORDERED** that the Rules for Resolution of Fee Disputes adopted by order dated May 11, 1989, be, and hereby are repealed; and it is,

**FURTHER ORDERED** that the revised Rules for Resolution of Fee Disputes, a true and correct copy of which is attached hereto, be adopted; and it is,

**FURTHER ORDERED** that the revised Rules for Resolution of Fee Disputes be published in the advance sheets of the Pacific Reporter and the Wyoming Reporter and shall become effective 60 days after their publication in the advance sheets of the Pacific reporter; and shall thereupon be spread at length upon the journal of this Court.

DATED this 6<sup>th</sup> day of January 1997.

FOR THE COURT:

*William A. Taylor*  
William A. Taylor  
Chief Justice

**Rules for Resolution of  
Fee Disputes**

**Rule 1. Authority to promulgate rules.**

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:

(1) The person or entity allegedly liable for payment; or

(2) The claimant attorney; or

(3) 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 fees which in the first instance are within the jurisdiction of a court to determine or approve.

**Rule 3. Definitions.**

(a) "BPR" is the Wyoming State Board of Professional Responsibility of the Wyoming State Bar as specified in the Disciplinary Code for the Wyoming State Bar.

(b) "Chairperson" is the chairperson of the Committee on Resolution of Fee Disputes who shall perform such duties as set forth in these rules and oversee the work of the committee.

(c) "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 disputes falling within its jurisdiction and, in the event such resolution

is not achieved, its duty to resolve the dispute by determinate decision.

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

(e) "Fee" is money or value claimed or exchanged arising from the relationship between a client and an attorney licensed to practice in this state.

(f) "Final billing" means:

(1) The first bill submitted by the attorney to a client after the case is closed and after the work to complete the case has been performed for which the attorney was originally hired; or

(2) The first bill submitted by the attorney to a client following termination of the attorney-client relationship by either the attorney or the client; or

(3) A statement which purports to support a distribution of money or value exchanged arising from a contingency fee case.

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

(h) "Panel chairperson" is the chairperson of a panel as defined by subdivision (g).

(1) "Petitioner" is the person filing a petition for resolution of a fee dispute.

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

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

**Rule 4. Appointment of members of committee 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 (1/3) for a period of two (2) years and one-third (1/3) for a period of three (3) years. As the term of office of each member expires, a 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 that person is a member shall be extended until that dispute is concluded; however, such extension shall not delay the appointment of a successor member to the committee.

(b) The president shall appoint the chairperson 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 Wyoming State 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) After a fee resolution petition is filed and a response submitted, the executive director shall submit a copy of all documents to the chairperson for processing of an informal resolution in accordance with Rule 8(d). If no informal resolution of the dispute is achieved within twenty-one (21) days of the date on which the executive director submitted the documents to the chairperson, then the executive director shall designate members for a hearing panel for that dispute; selection considerations may include geographical factors and experience in the area of law in which the attorney provided the services which are the subject of the fee dispute. In panel designations, the executive director shall also strive to rotate selection in an equitable manner so as 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

executive director shall also designate the person among the three (3) named who shall serve as panel chairperson.

(1) The panel will consist of one (1) member if the amount in dispute is two thousand dollars (\$2,000) or less, and three (3) members if a greater sum is claimed.

(2) 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 executive director shall designate another member. Each party may challenge panel members, without cause, within seven (7) days after notification of the assignment of the panel. Such challenges for cause shall be made upon the same grounds as provided in a civil action and must be made in writing.

(3) If any member of a three-member panel dies or becomes unable to continue to act while the matter is pending, but before an award has been made, and the two remaining members cannot arrive at a unanimous decision, the proceedings shall be terminated and the matter reassigned for a de novo hearing, unless the parties, with the consent of the panel chairperson, or, in the event of the chairperson's unavailability, the executive director, consent to proceed with the hearing with only the two (2) remaining panel members.

**Rule 5. Duties of executive director.**

The executive director shall act as secretary to the committee and to the several panels, but is not responsible for attending panel hearings, or for providing secretarial or recording service for the hearings. The executive director shall:

(a) Keep and maintain records of the documents filed by both complainants and respondents;

(b) Keep and maintain records concerning the determinations and awards of the committee and its respective panels;

(c) Complete all of the administrative duties set forth in

Rule 4(d) and Rule 12;

(d) Maintain permanent records regarding the committee for a period of six (6) years, and then dispose of those records if no other applications for resolution of fee disputes were filed against an attorney during the six year period;

(e) Provide the Board of Bar Commissioners with an annual report by September 1st of each year of the number of cases, docket number, the identity of the parties, the referral date, resolution date, any appeal taken from the resolution, the amount of any award and whether the matter was referred to the Board of Professional Responsibility, the costs and the proposed annual budget.

**Rule 6. Submission of disputes.**

(a) Any client or attorney may, within one hundred-twenty (120) days of receipt by a client of a final billing of an attorney for legal services (limitation period), contest the charged fee or contest the refusal to pay a 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 by any client within the limitation period, the attorney shall participate in the proceedings and be subject to the final decision made. If a petition is filed by the client after the limitation period, the attorney may elect whether or not to participate by giving notice to the executive director within fifteen (15) days of receipt of notice of filing of the petition. Failure of the attorney to make such election within the time period allotted shall constitute an irrevocable election by the attorney to be subject to the jurisdiction of the committee and any proceedings hereunder.

(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) If the limitation period expires without the client filing a complaint with the committee, an attorney may elect to collect a claimed unpaid fee by either:

- (1) Filing a petition for fee resolution hereunder; or
- (2) Filing 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. The 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 under these rules.

**Rule 7. Matters considered by committee.**

The committee shall consider any disagreement concerning a fee which is not excluded under Rule 2(b).

**Rule 8. Processing of petitions.**

(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 and must, before completion, include copies of all pertinent contract documents, correspondence and other pertinent documents, 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 petitioner 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 petitioner fails or refuses to execute such acknowledgment and pay the fee, the matter shall be closed by the executive director.

(c) Upon receipt of the petition for resolution of fee dispute, a copy of the petition will be forwarded to the respondent

by the executive director. The respondent, whether a client or attorney, shall respond to the details of the complaint and provide pertinent documents with the response, to the executive director, within fifteen (15) days of the date of receipt of the petition for resolution of fee dispute. If the respondent is an attorney licensed to practice in the State of Wyoming, notice shall also be given that:

(1) Disposition of the fee dispute has no effect upon whether or not a violation of the Rules of Professional Conduct may have occurred; and

(2) It is the duty of the panel to report at the conclusion of the fee dispute resolution proceeding any alleged violation of the Rules of Professional Conduct or the Disciplinary Code for the Wyoming State Bar to the BPR.

(d) Upon receipt of the respondent's response as provided in subparagraph (c) above, the executive director shall forward all documents to the chairperson. The chairperson shall review the documentation, including the petition and the response, and all attached documents, and confer with the executive director. If it appears to either or both the chairperson and the executive director that the dispute might be resolved by informal contact with the petitioner and respondent, then the chairperson shall, within twenty-one (21) days of receipt of the respondent's response, contact both the petitioner and the respondent to explore the possibility of an informal resolution of the dispute. If upon contact with the parties a resolution is attained, an order embracing the terms of the informal resolution shall be prepared by the chairperson and submitted to the executive director who shall transmit the order to the petitioner and respondent and close the file. If within the twenty-one (21) day period the chairperson is unable to effect a resolution, or if the chairperson and the executive director determine that such attempt would be ineffectual, then a panel chairperson shall be designated by the executive director and all documents forwarded to the panel chairperson to go forward with the hearing proceedings established in Rule 4(d). In the event the duties of the chairperson becomes overly burdensome, that individual may designate a member of the committee to serve as a substitute with respect to any specific

case.

**Rule 9. Proceedings exempt from administrative provisions.**

Pursuant to W.S. § 16-3-101(b)(1), proceedings under these rules are in the nature of arbitration and exempt from the Wyoming Administrative Procedures Act (W.S. §§ 16-3-101 through 16-3-115).

**Rule 10. Transcription of proceedings.**

The panel chairperson shall provide for an electronic transcription of the entire hearing unless in lieu thereof a party requests and arranges for a court reporter to transcribe the proceedings.

**Rule 11. Hearing and rendering of resolution order.**

(a) The panel shall conduct a hearing within thirty (30) days of the date of the panel chairperson's receipt of the petition for fee dispute resolution and accompanying documents from the executive director.

(b) All hearings shall be before the panel and shall be conducted as nearly as possible in accordance with the following order of procedure.

(1) The chairperson shall announce that the panel is convened for a formal hearing and call, by docket number and title, the case to be heard.

(2) Petitioner will be allowed an opening statement to briefly explain petitioner's position to the panel and outline the evidence petitioner proposes to offer, together with the purpose thereof.

(3) The respondent will be allowed an opening statement upon the same terms as petitioner.

(4) Petitioner's evidence will be heard first. Witnesses may be cross-examined by the respondent and by members of the panel. Petitioner's exhibits will be marked by letters of the alphabet beginning with "A".

(5) The evidence of the respondent will be heard, and exhibits of the respondent will be marked with numbers, beginning with "1". Petitioner and each member of the panel shall have the right to cross-examine all witnesses presented on behalf of the respondent.

(6) The panel shall consider all relevant evidence. The panel may, in its discretion, schedule and hear motions, allow evidence to be offered out of order and allow deviation to the procedure to allow for the convenience of the parties and/or efficiency of the proceedings.

(7) Closing statements will be made in the following sequences:

- (A) Petitioner;
- (B) Respondent;
- (C) Petitioner in rebuttal.

The time for oral argument may be limited by the chairperson.

(8) The chairperson may recess and adjourn the hearing as deemed appropriate.

(9) After petitioner and respondent have been offered an opportunity to be heard, the chairperson shall declare the evidence closed. The evidence of the case may be reopened at a later date, for good cause shown, by order of the panel upon motion of any party to the proceeding, the chairperson or the panel

itself.

(10) Parties may tender briefs or the panel may call for such briefs as may be desirable.

(11) The panel chairperson may request proposed findings of fact and proposed conclusions of law from petitioner and respondent.

(12) The chairperson shall have the authority to administer oaths, to compel the attendance of witnesses, to order the production of evidence and to enforce discipline and control substantially similar to that of a district judge, including the power of subpoena.

(13) Any party to a hearing has the right to be represented by an attorney at the hearing.

(c) The attorney is responsible for carrying the burden of proof by a preponderance of the evidence. If the attorney fails to carry the burden by a preponderance of evidence, the panel shall enter a resolution order against the attorney.

(d) The panel shall render a resolution order within fifteen (15) days of the date that the hearing was completed.

(e) At the conclusion of any hearing, the panel shall make a resolution order. The resolution order of the panel shall be expressed in writing and shall be signed by all of the panel members. The resolution order shall be binding and final when signed by all of the panel. The resolution order shall state the disposition of the fee dispute petition and may set forth findings of fact, conclusions of law and specific terms of the award or denial of the award. If there is a dissent or concurring opinion, that panel member may make separate findings of fact and conclusions of law.

(f) The resolution order may provide for payment of costs or other expenses or a portion thereof related to the proceedings. No resolution order shall award fees to be paid to the panel or an

assigned member of the panel. No resolution order shall award attorney's fees to the petitioner or respondent in this proceeding.

(g) Unless the petition or contract provides otherwise, the panel may grant any remedy or relief deemed proper including an order for specific performance or any other order which is necessary or appropriate to resolve the petition for fee dispute in a fair, equitable and just manner.

(h) In the event that any party to a fee dispute resolution shall fail to submit documentation at the time and in the manner prescribed by these rules, or shall fail to appear without good cause at the time and place set for hearing, the panel shall have discretion to enter any order deemed appropriate, including the entry of a default or the granting of the non-defaulting party's request for relief, or otherwise enter any order which may be deemed fair, equitable and just.

(i) The panel may conduct all hearings by telephone conference call but shall have the power, where the majority of the panel deems appropriate, to order all parties and the panel to appear at a time and specified location deemed by the panel to be the most convenient to all participants for the hearing on all issues.

**Rule 12. Processing award; filing; professional conduct violations.**

(a) Upon rendering of the resolution order as above provided, the chairperson of the panel shall forward to the executive director an original and four (4) copies signed by all panel members. The panel chairperson shall authenticate the resolution order, certify the record and forward the exhibits and documents for filing by the executive director, who shall thereupon, for and on behalf of the panel, serve a signed copy of the resolution order on each party, personally or by certified mail, and notify the chairperson of the committee that the matter has been concluded.

(b) The executive director shall, within fifteen (15) days of the date of receipt of the resolution order, transmit that order to all parties to the fee dispute. The letter of transmittal shall inform the parties of their respective rights to a petition for review pursuant to Rule 14 of these rules.

(c) 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, the tape recording or other transcription of the proceeding, together with the resolution order and all exhibits, shall be promptly forwarded to the BPR by the panel chairperson.

**Rule 13. Death or incompetency of party.**

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 resolution order, the order 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, Wyoming Rules of Appellate Procedure, entitled "Judicial Review of Administrative Action," may be requested by filing in the office of the clerk of the district court having venue of the underlying litigation if a lawsuit was involved and, if not, having venue wherein the attorney resides, or Laramie County if such attorney resides outside of the State of Wyoming. A copy of the petition for judicial review shall be served on the executive director at the offices of the Wyoming State Bar, Cheyenne, Wyoming.

(b) In the event that the underlying litigation was a federal court proceeding, venue will exist for judicial review in the state district court wherein the attorney resides, or Laramie County if such attorney resides outside of the State of Wyoming.

(c) A petition for judicial review shall be filed within thirty (30) days following service of the resolution order 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 reviewing 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 party seeking review. If, before the date set for hearing, application is made to the court for leave to present additional evidence and shows 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 panel, the court may order that additional evidence be taken. 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 Rule 12 of the Wyoming Rules of Appellate Procedure.

**Rule 15. Enforcement of resolution order by court.**

(a) Following entry of a resolution order by the panel chairperson, as duly filed with the executive director, and after the time has expired for judicial review in the case if the party against whom the resolution order was intended has not paid the award, the party in whose favor the resolution order was entered may proceed by filing a certified copy of the resolution order with the clerk of the district court in the judicial district wherein the party against whom the resolution order was entered resides. The resolution order shall have the same binding affect as provided for judgments of the justice of peace in W. S. § 1-17-306, including the right to have execution and writs of garnishment issued.

(b) Any resolution order rendered may be enforced by the prevailing party by any court of competent jurisdiction.

(c) If the resolution order shall determine that the participating attorney or attorneys are not entitled to any portion of the disputed fee, and if the client has paid in full all other fees which were owed but not disputed and/or resolved pursuant to

the fee resolution petition, then service of a copy of such resolution order on the attorney or attorneys shall:

(1) 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;

(2) 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;

(3) 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.

(d) If the resolution order shall be in favor of an attorney or attorneys, the panel shall fix the amount due the attorney or attorneys.

(1) The payment of that amount or amounts by the client or clients shall constitute a complete satisfaction of all claims against the client or clients relative to the subject matter of the hearing.

(2) 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 subdivisions (c)(1), (c)(2) and (c)(3), above.

**Rule 16. Expenses.**

Unless otherwise ordered pursuant to Rule 11(f), the expense of members of the committee, as well as the expenses of the assigned member, and other expenses incurred in the implementation or administration of these rules, shall be paid by the committee out of funds allocated to it by the Wyoming State Bar.

**Rule 17. Confidentiality.**

An attorney may reveal information relating to the representation of a client to the extent it is reasonably necessary to establish a claim or defense on behalf of the attorney in a fee dispute controversy between the attorney and the client and to respond to allegations in a fee dispute resolution concerning the attorney's representation of the client.

With the exception of the decision itself, all records, documents, files, proceedings and hearings pertaining to arbitrations of any fee dispute maintained by the executive director shall not be opened to the public or any person not involved in the dispute, except bar counsel, BPR, or a court having jurisdiction over a petition for judicial review pursuant to Rule 14 of these rules.

**Rule 18. 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 the subject attorney during the six-year period.