

# RULES GOVERNING CONTINGENT FEES FOR MEMBERS OF THE WYOMING STATE BAR

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### Rule 1. Definition.

In these rules, the term “contingent fee agreement” means an agreement, express or implied, for legal services of an attorney or attorneys (including any associated counsel), under which compensation, contingent in whole or in part upon the successful accomplishment or disposition of the subject matter of the agreement, is to be in an amount which either is fixed or is to be determined under a formula. The term “contingent fee agreement” shall not include an arrangement with a client, express or implied, that the client in any event is to pay to the attorney the reasonable value of his services and his reasonable expenses and disbursements.

### Rule 2. Construction of agreement.

Unless expressly prohibited by these rules, no written contingent fee agreement shall be regarded as champertous if made in an effort in good faith reasonably to comply with these rules.

### Rule 3. Exemptions.

No contingent fee agreement shall be made (a) in respect to the procuring of an acquittal upon or any favorable disposition of a criminal charge, (b) in respect of the procuring of a divorce, annulment of marriage or legal separation or (c) in connection with any proceeding where the method of a determination of attorneys’ fees is otherwise expressly provided by statute or administrative regulations. Contingent fee arrangements concerning the collection of commercial accounts and of insurance company subrogation claims made in accordance with usual practices in respect of such cases shall not be regarded as champertous, and shall not be subject to Rules 4 and 5.

### Rule 4. Procedure.

Each contingent fee agreement shall be in writing in duplicate. Each duplicate copy shall be signed both by the attorney and by each client. One (1) signed duplicate copy shall be mailed or delivered to each client within a reasonable time after the making of the agreement. One (1) such copy (and proof that the duplicate copy has been delivered or mailed to the client) shall be retained by the attorney for a period of three (3) years after the completion or settlement of the litigation or the termination of the services, whichever event first occurs.

**Rule 5. Court review.**

(a) It is recognized that contingent fees vary in amount depending upon those factors which are described in paragraph (f) of this rule and that a common contingent fee in casualty and wrongful death cases is thirty-three and one-third (33 $\frac{1}{3}$ ) percent of amounts recovered prior to appeal and forty-five - fifty (45 - 50) percent of amounts recovered on appeal.

Contingent fees which do not exceed the following schedule will be presumed to be reasonable and not excessive where the total recovery does not exceed one million dollars (\$1,000,000):

(1) thirty-three and one-third (33 $\frac{1}{3}$ ) percent of the recovery if the claim is settled prior to or within sixty (60) days after suit is filed;

(2) forty (40) percent of the recovery if the claim is settled more than sixty (60) days after filing suit or if a judgment is entered upon a verdict.

(b) For those amounts of a recovery in excess of one million dollars (\$1,000,000) a contingent fee of thirty (30) percent of such excess sum over one million dollars (\$1,000,000) shall be presumed reasonable and not excessive.

(c) The provisions of this rule are not intended to abridge the freedom of the attorneys and clients to contract for different percentages.

(d) Each attorney or law firm sharing in a fee shall be legally liable to the claimant for any professional malpractice of any other attorney or law firm sharing in the fee to the same extent as if they were partners. No attorney shall share in any fee unless the attorney shall be available to the claimant for consultation concerning the matter. No attorney or any other person shall receive any fee merely for referring a claimant to another attorney for representation. The terms for sharing of any fee shall be disclosed to the client in a written document.

(e) A copy of these rules relating to contingent fees shall be furnished and fully explained to the client at the time of entering into any contingent fee contract.

(f) A party to a contingent fee agreement may, by written application, have a review of the reasonableness of the fee fixed therein by the Committee on Resolution of Fee Disputes of the Wyoming State Bar. Such written application must be filed with the committee prior to the expiration of sixty (60) days after the date of the final distribution of the money proceeds. The burden of proof in proceedings pursuant to this rule shall be upon the moving party.

The committee shall hold a hearing on each application filed with it, and shall record its proceedings, either by stenographic means or by electronic recording. The record of the committee hearing shall be certified by the committee chairman and promptly transmitted to the court reviewing the matter.

In its determination of the reasonableness of the fee, upon review, the committee may consider as applicable the following criteria:

(1) the amount of costs incurred or advanced by the attorney in representing the client;

(2) the time and labor required;

(3) the novelty and difficulty of the questions involved;

(4) the skill requisite to perform the legal service properly;

(5) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney;

(6) the fee customarily charged in the locality for similar legal services;

(7) the amount involved in the controversy and the benefits resulting to the client;

(8) the time limitations imposed by the client or by the circumstances;

(9) the nature and length of the professional relationship with the client;

(10) the experience, reputation, and ability of the attorney or attorneys performing the services; and

(11) the contingency or the certainty of the compensation.

In every proceeding under this rule for determination of reasonableness of a contingent fee, it shall be the obligation of all parties to make a full disclosure to, and file with, the committee originals or copies of all records, files, correspondence, or other documentary evidence relevant to the proceedings.

(g) A state district court which has jurisdiction of the case which is the subject matter of the agreement shall review the final action and decision of the committee, upon the filing of a petition for review, which shall be filed within thirty (30) days following service of the committee's written decision upon the parties. At the date set for hearing, the court shall review the record. If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the 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 argument in its discretion.

The briefing schedule shall be fixed by the court. The court may, in its discretion, remand the case to the committee for proceedings in accordance with the direction of the court. If the case is not remanded, the court shall enter judgment, affirming, modifying, or reversing the order of the committee. The court's judgment shall be a final judgment appealable to the Wyoming Supreme Court.

(Amended January 31, 1987, effective May 5, 1987.)

#### **Rule 6. Form and contents.**

Each contingent fee agreement shall contain the provisions of and be substantially in the form of the agreement which follows these rules. Amendments of, or modifications to, the provisions of paragraphs I through XI of the agreement, which effectively change the rights of the client, shall have no force or effect unless such amendment or modification is sanctioned by the Wyoming district court which does, or would have, jurisdiction of the litigation.

Forms attached are as follows:

- I. Representation Agreement
- II. Authorization for the Release of Medical Information
- III. Statement of Distribution — Gross Recovery
- IV. Statement of Distribution — Net Recovery

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ATTACHMENT I

(law firm letterhead optional)

REPRESENTATION AGREEMENT  
to be executed in duplicate

Dated this ..... day of ....., (year)

ATTORNEY:

Address:  
Phone:

CLIENT:

Address:  
Phone:

CLAIM:

Date of occurrence:  
Adverse party:  
Event:

The client employs attorneys whose names are listed above to represent the client in the handling, presentation and settlement of any and all claims which client may have as a result of the event described above and to institute any and all litigation necessary or advisable in the attorney's sole discretion to resolve the client's claim.

Associate counsel may be employed at the discretion and expense of the attorneys to assist or principally prepare and conduct the trial of this matter. Sharing of employment and the terms of that employment shall be disclosed to the client.

No promise or representation has been made by said attorneys as to the outcome of the claim or litigation, or as to what amounts, if any, the client may be entitled to recover in this case.

I.  
NEGOTIATION OF FEES

It is understood the amount of contingent fees are negotiated between the client and the attorney. Different attorneys may charge differently for this matter. This fee is intended to fairly compensate the attorney for the professional services rendered. Factors considered in setting a contingent fee are:

1. The time and labor required;
2. The novelty and difficulty of the questions involved;
3. The skill requisite to perform the legal service required;
4. The forbearance of other work by the attorney;
5. The fee customarily charged in the locality for similar legal services;
6. The amount of costs incurred or advanced by the attorney in representing the client;
7. The amount involved in the controversy and the benefits resulting to the client;
8. The time limitations imposed by the client or the circumstances;
9. The nature and length of the professional relationship with the client;
10. The experience, reputation, and ability of the attorney performing the services;
11. The contingency or certainty of the compensation;
12. Discussions with the defendant about settlement prior to counsel entering the case.

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II. FEES

After discussion of the factors contained in the paragraph, Negotiation of Fees, the client agrees to pay a fee in an amount set forth in paragraph (paragraph 1 or 2 must be selected). If no recovery is obtained, no fee shall be payable to the attorneys. Gross recovery is recovery before deducting costs. Net recovery is recovery after costs are deducted. Costs are all litigation expenses incurred in the prosecution of the case other than the attorney's compensation.

SELECT PARAGRAPH 1 OR 2

PARAGRAPH 1 (FLAT PERCENTAGE)

The client agrees to pay a fee in an amount of ..... percent of the gross or net (delete one not applicable and if no exclusion, net fee applies) recovery whether as a result of settlement or trial.

PARAGRAPH 2 (SCHEDULED PERCENTAGES)

The client agrees to pay a fee in the amount of ..... percent of the gross or net (delete one not applicable and if no exclusion, net fee applies) recovery if the claim is settled within sixty (60) days after filing suit. Thereafter, the fee percentage shall be ..... percent, unless appeal is required, at which time a separate agreement for the fee percentage shall be made.

Client and counsel have discussed whether any negotiations have been held regarding settlement before counsel entered the case. If there have been such discussions, client shall furnish proof of any offer within seven (7) days of this contingent fee contract. It is mutually understood that the status of any settlement negotiation has been taken into account by the client and the attorney in reaching a contingent fee arrangement.

III. FEE DISPUTES

The client shall first contact his attorney with any questions concerning the charges agreed to in this agreement. Any dispute or question that remains unresolved shall be set forth in writing by both the attorney and the client and delivered to the other party. If they do not agree on the resolution of the questions the client or the attorney shall have this matter arbitrated by the Committee on the Resolution of Fee Disputes. The Committee on the Resolution of Fee Disputes may be reached through the offices of the Wyoming State Bar Association in Cheyenne, Wyoming. Thereafter the client or the attorney may have recourse to the district court as provided by the Wyoming Supreme Court Rules Governing Contingent Fees for Members of the Wyoming State Bar (Wyoming Court Rules Annotated).

IV. INVESTIGATION

The client understands the attorney will investigate the client's claim. The attorney may gather medical information, talk to witnesses, talk to family members, and take such other actions as the attorney in his judgment deems necessary. The client agrees to sign the attached Authorization for the Release of Medical Information to permit the attorney to fairly investigate the client's claim.

V.  
EXPENSES

It is further understood and agreed the client shall pay all out-of-pocket costs incurred in the prosecution of this claim, such as court costs, costs of litigation, travel costs, expert witness fees, deposition expenses, and the like. It is understood these costs may be in addition to the legal fees set forth above if a gross fee arrangement is made. In the event such costs are not paid by the client currently, the attorney may advance such costs and expenses which are to be reimbursed when billed and in no event later than the conclusion of litigation whether or not a recovery is obtained.

Reimbursable costs shall be reported to the client on a regular basis.

VI.  
MEDICAL EXPENSES

All medical expenses and medical charges of any kind for treatment of the client are not included as litigation costs and are the responsibility of the client. In the event of recovery, the client agrees the attorneys may pay any of these unpaid bills from client's share of the recovery. Should the client recover nothing, it is understood the attorneys are not bound to pay any of these medical bills.

VII.  
STRUCTURED SETTLEMENT

The attorney fees shall also be paid in a lump sum out of the initial payment by the defendant unless otherwise agreed upon in the structured settlement agreement. The attorney's fees shall be based upon the present value of the structured settlement.

VIII.  
STATEMENT UPON DISTRIBUTION

At the time of final distribution of the proceeds of the claim or litigation, the attorney shall prepare and the client shall approve by signature, a final settlement accounting. The Statement of Distribution shall include:

1. The source of funds.
2. The total amount of the recovery or settlement.
3. The contingency percentage.
4. The total costs.
5. The proceeds to the client.
6. The amount held in reserve, if any, for costs which have not yet been billed and a statement of the period during which such reserve shall be held in trust.
7. Liens, if any, and the amount to be paid by the client.

Attached to this document is a form for use as the Statement of Distribution.

IX.  
WITHDRAWAL OF ATTORNEY

The attorney, in his discretion, may withdraw at any time from the case by adequate notice in writing: if the investigation discloses inability to collect damages, or discloses no assets or liability of the defendant; or if the attorney determines the representation is not compatible with directions; or if the conduct of the client is uncooperative.

X.  
RESCISSION BY THE CLIENT

This agreement shall be effective immediately. However, the client shall have a period of three (3) calendar days from the date hereon to rescind by notice in writing

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postmarked by registered mail or actual delivery to the attorney before the end of the third day.

XI.

RELEASE OF INFORMATION

The client authorizes the attorney to release any and all information including doctors' reports, medical reports, financial information, investigators' reports, statements of witnesses, pictures, and other information, to the insurance company or such legal representative of the defendant as the attorney may decide is appropriate for settlement negotiations or as required by law in trial processes.

XII.

OTHER CONDITIONS

.....  
.....  
.....  
.....  
.....

Dated this ..... day of ....., (year).

WE HAVE EACH READ THIS AGREEMENT BEFORE SIGNING

Attorney ..... Client(s) .....  
BY: .....  
.....

Attachments:  
Rules Governing Contingent Fees for Members of the Wyoming State Bar, Rules 5 and 6.

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ATTACHMENT II

(law firm letterhead optional)

AUTHORIZATION FOR THE  
RELEASE OF MEDICAL INFORMATION

ATTORNEY .....  
CLIENT/PATIENT .....  
BIRTHDATE OF PATIENT .....  
APPROXIMATE PERIOD OF TREATMENT .....

To my health care providers:

You are hereby authorized and directed to furnish and release to my attorney or his delegate all records and information which he may request and as he may separately enumerate. My attorney or his delegate is permitted to examine, copy, or reproduce any or all portions of my records. This release is intended to waive as to my attorney or his delegate, physician-patient privilege which I may assert in regard to my diagnosis, treatment and prognosis while in your care. You are to provide all records, billing, x-rays, charts, and notes which my attorney may request regarding my past or present mental, physical or dental condition, history, or treatment. You are further authorized to consult with my attorney orally about my health care if he should so desire.

My attorney or his delegate is permitted to photograph my person, while I am present in any hospital or health care provider.

All prior authorizations or releases are hereby cancelled. This authorization shall continue until revoked by me in writing. A photostatic copy shall serve in the same stead as an original.

.....  
DATED

.....  
PATIENT OR LEGAL REPRESENTATIVE

.....  
RELATIONSHIP IF NOT PATIENT

.....  
WITNESS

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ATTACHMENT III

(law firm letterhead optional)

STATEMENT OF DISTRIBUTION

.....  
(client name)

GROSS RECOVERY DISTRIBUTION

SOURCE OF FUNDS .....  
GROSS RECOVERY (total funds) \$......

LESS ATTORNEY FEES  
(...% of \$....) .....  
BALANCE AFTER ATTORNEY FEE .....

LIENS

WORKER'S COMPENSATION .....  
(see attached)

OTHER LIENS .....

UNPAID COSTS ADVANCED BY ATTORNEY .....  
(see attached)

BALANCE AFTER COSTS .....

MEDICAL EXPENSES TO BE PAID .....  
(see attached)

BALANCE AFTER MEDICAL COSTS .....

PROCEEDS DUE CLIENT \$......

TRUST RESERVE FOR UNPAID COSTS .....

BALANCE PAID HEREWITH \$......

TOTAL FUNDS .....

ACCEPTED AND APPROVED: ..... DATE .....  
(CLIENT NAME)

..... DATE .....  
(ATTORNEY)

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ATTACHMENT IV

(law firm letterhead optional)

STATEMENT OF DISTRIBUTION

.....  
(client name)

NET RECOVERY DISTRIBUTION

SOURCE OF FUNDS .....		
GROSS RECOVERY (total funds)		\$.....
	LESS COSTS INCURRED	
	(see attached)	.....
NET RECOVERY		\$.....
ATTORNEY FEE AT .....% OF \$.....		.....
PLUS COSTS ADVANCED BY ATTORNEY		.....
TOTAL PAYABLE TO ATTORNEY		.....
NET RECOVERY AFTER FEE		.....
PLUS COSTS ADVANCED BY CLIENT		.....
TOTAL PAYABLE TO CLIENT		\$.....
LIENS		
	WORKER'S COMPENSATION	.....
	OTHERS	.....
MEDICAL BILLS PAID		.....
(see attached)		
	TOTAL DEDUCTIONS	\$.....
PROCEEDS DUE TO CLIENT		\$.....
TRUST RESERVE FOR UNPAID COSTS		.....
BALANCE PAID HEREWITH		\$.....
	TOTAL FUNDS	.....

ACCEPTED AND APPROVED: ..... DATE .....  
(CLIENT NAME)

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..... DATE .....

(ATTORNEY)

(Amended January 31, 1987, effective May 5, 1987.)

**Rule 7. [Abrogated].**

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