WYOMING RULES FOR FEE ARBITRATION [EFFECTIVE OCTOBER 1, 2016.]

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Rule 1. General principles and jurisdiction [Effective October 1, 2016.]

(a) Definitions. The following definitions shall apply in all fee arbitration proceedings.

(1) "Chair" means the chairperson of the Fee Arbitration Committee, or the Chair's designee.

(2) "Client" means a person or entity who directly or through an authorized representative consults, retains or secures legal services or advice from a lawyer in the lawyer's professional capacity.

(3) "Committee" means the Fee Arbitration Committee.

(4) "Decision" means the determination made by the panel in a fee arbitration proceeding.

(5) "Lawyer" means a person admitted to the practice of law in Wyoming, or any other person who appears, participates or otherwise engages in the practice of law in this state, regardless of the status of his or her license. In these rules, the term "lawyer" includes a lawyer's assignee.

(6) "Panel" means the arbitrator(s) assigned to hear a fee dispute and to issue a decision.

(7) "Party" means the client, lawyer, the lawyer's assignee and any third person or entity who has been joined by the client or lawyer in the proceeding.

(8) "Petition" means a written request for fee arbitration in a form approved by the Committee.

(9) "Petitioner" means the party requesting fee arbitration.

(10) "Respondent" means the party with whom the Petitioner has a fee dispute.

(b) Establishment; Purpose. It is the Wyoming Supreme Court's policy to encourage the informal resolution of fee disputes between lawyers who practice law in Wyoming and their clients and, in the event such informal resolution cannot be achieved, to provide for the arbitration of such disputes. To that end, the Wyoming Supreme Court hereby establishes through adoption of these rules, a program and procedures for the arbitration of disputes concerning any and all fees and/or costs paid, charged, or claimed for professional services by lawyers.

(c) Arbitration Mandatory for Lawyers. Fee arbitration pursuant to these rules is voluntary for clients and mandatory for lawyers if timely commenced by a client in accordance with these rules.

(d) Effect of Arbitration.

(1) The Fee Arbitration is final and binding where all parties have agreed in writing that it will be binding.

(2) In the absence of a written agreement to be bound by the arbitration, the decision automatically becomes binding, unless, as permitted under Rule 7(b), any party seeks a trial de novo pursuant to the Wyoming Rules of Civil Procedure within 30 days after service of the decision. This 30 day time period shall not be extended by an application for modification under these rules.

(3) After all parties have agreed in writing to be bound by an arbitration award, a party may not withdraw from that agreement unless all parties agree to the withdrawal in writing. At any time during the proceedings, the parties may agree in writing to be bound by the decision.

(e) Jurisdiction. Any lawyer, as defined in Rule 1(a)(6), is subject to these rules for fee arbitration.

(f) Disputes Not Subject to Arbitration. These rules do not apply to the following:

(1) Disputes where the lawyer is also admitted to practice in another jurisdiction, the lawyer maintains no office in Wyoming, the legal services rendered did not require membership in the Wyoming State Bar;

(2) Disputes where the client seeks affirmative relief for damages against the lawyer based upon alleged malpractice or professional misconduct;

(3) Disputes where entitlement to and the amount of the fees and/or costs charged or paid to a lawyer by the client or on the client's behalf have been determined by statute, court order, rule, or decision;

(4) Disputes where a third person is responsible for payment of the fees and the client fails to join in the request for arbitration; and

(5) Disputes where the request for arbitration is filed more than one year after the lawyer-client relationship has been terminated or more than one year after the final billing has been received by the client, whichever is later, unless a civil action concerning the disputed amount is later brought by the lawyer, in which case the client shall have 30 days after service of the notice required by Rule 1(g) to file a Petition for Fee Arbitration.

(g) Notice of Right to Arbitration; Stay of Proceedings; Waiver by Client.

(1) Prior to or at the time of service of a summons in a civil action against his or her client for the recovery of fees, costs, or both for professional services rendered, a lawyer shall serve upon the client by certified mail return receipt requested a written notice of the client's right to arbitrate. The notice shall include a provision advising the client that failure to file a Petition for Fee Arbitration within 30 days of service of notice of the right to arbitrate shall constitute a waiver of the right to arbitrate. Failure to give this notice shall be grounds for dismissal of the civil action.

(2) If a lawyer commences a fee collection action in any court, the court shall issue an order of stay upon the client giving notice to the court and the lawyer that a Petition for Arbitration was filed with the Committee within 30 days of service of the notice of the right to arbitrate.

(3) After a client files a Petition, the lawyer shall refrain from any non-judicial collection activities related to the fees and/or costs in dispute pending the outcome of the arbitration.

(4) Unless all parties agree in writing to the arbitration, the right of the client to petition or maintain an arbitration is waived if:

(i) the client fails to file a Petition for Arbitration within 30 days of service of the notice of right to arbitrate pursuant to these rules; or

(ii) the client commences or maintains a civil action or files any pleading seeking judicial resolution of the fee dispute, or seeking affirmative relief against the lawyer for damages based upon alleged malpractice.

(h) Obligation to Report Lawyer Misconduct. A lawyer member of the Committee or of a panel who knows that another lawyer has committed a violation of the Rules of

Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority. *See* Rule 8.3(a), Wyoming Rules of Professional Conduct.
(Added May 10, 2016, effective October 1, 2016.)

Rule 2. Fee arbitration committee [Effective October 1, 2016.]

(a) Appointment of Committee. The Court shall appoint a Fee Arbitration Committee to administer the Fee Arbitration Program.

(b) Composition. The Committee shall consist of six members of whom two shall be nonlawyers. Members shall be appointed for terms of three years or until a successor has been appointed. Appointments shall be on a staggered basis so that the number of terms expiring shall be approximately the same each year. No members shall be appointed for more than two consecutive full terms, but members appointed for less than a full term (either originally or to fill a vacancy) may serve two full terms in addition to such part of a term. Each year the Committee shall designate one of the lawyer members to serve as Chair.

(c) Duties of the Committee. The Committee shall have the following powers and duties:

(1) to appoint, remove and provide appropriate training for lawyer and nonlawyer arbitrators and arbitration panels;

(2) to interpret these rules;

(3) to approve forms;

(4) to establish written procedures that afford a full and equal opportunity to all parties to present relevant evidence;

(5) to issue an annual report and periodic policy recommendations, as needed, to the Court regarding the program;

(6) to maintain all records of the Fee Arbitration Program;

(7) to determine challenges for cause where an arbitrator has not voluntarily acceded to a challenge;

(8) to educate the public and the bar about the Fee Arbitration Program; and

(9) to perform all acts necessary for the effective operation of the program.

(d) Committee Quorum. Three members including at least one nonlawyer member shall constitute a quorum of the Committee.

(e) Reimbursement of Expenses. Members of the Committee shall be entitled to reimbursement by the Wyoming State Bar for reasonable travel, meals, lodging and other expenses incurred in the course of their official duties.

(f) Administrative Support. Wyoming State Bar staff shall be assigned to assist the Committee. The assigned staff shall have such administrative responsibilities as may be delegated by the Committee.
(Added May 10, 2016, effective October 1, 2016.)

Rule 3. Arbitrators [Effective October 1, 2016.]

(a) List of Approved Arbitrators. The Committee shall maintain a list of approved arbitrators and shall adopt written standards for the appointment of the arbitrators. Such standards should ensure appropriate training and experience for arbitrators as well as diversity in the background and experience of the arbitrators. Arbitrators shall be appointed for terms of three years and may be reappointed. For good cause, the Committee may remove an arbitrator from the list of approved arbitrators, and may appoint a replacement member to serve the balance of the term of the removed member.

(b) Panels. The Committee shall appoint panels from the list of approved arbitrators. For disputes involving $10,000 or more, the panel shall consist of three arbitrators of whom one shall be a nonlawyer member. For disputes involving less than $10,000, or in

any case if the parties so stipulate, the panel shall consist of a sole arbitrator who shall be a lawyer. If the panel consists of three members, the Committee shall designate one member to act as chair of the panel and to preside at the arbitration hearing.

(c) Conflicts of Interest. Within five days of the notification of appointment to a panel, an arbitrator shall notify the Committee of any conflict of interest with a party to the arbitration as defined in the Wyoming Code of Judicial Conduct with respect to part-time judges. Upon notification of the conflict, the Committee shall appoint a replacement from the list of approved arbitrators.

(d) Challenges for Cause. A party may challenge any arbitrator for cause. A challenge for cause naming the arbitrator and the reason for the challenge shall be filed within 15 days after service of the notice of appointment. An arbitrator shall accede to a reasonable challenge and the Committee shall appoint a replacement. If an arbitrator does not voluntarily accede, the Committee shall decide whether to appoint a replacement. The decision of the Committee on challenges shall be final.

(e) Duties. The panel shall have the following powers and duties:

(1) to take and hear evidence pertaining to the proceeding;

(2) to administer oaths and affirmations;

(3) to compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding, and consider challenges to the validity of subpoenas;

(4) to issue decisions; and

(5) to perform all acts necessary to conduct an effective arbitration hearing.

(f) Reimbursement of Expenses. Arbitrators shall be entitled to reimbursement by the Wyoming State Bar for reasonable travel, meals, lodging and other expenses incurred in the course of their official duties.

(Added May 10, 2016, effective October 1, 2016.)

Rule 4. Commencement of proceedings [Effective October 1, 2016.]

(a) Petition to Arbitrate. A fee arbitration proceeding shall commence with the filing of a Petition for Arbitration on a form approved by the Committee. Any person who is not the client of the lawyer but who has paid or may be liable for the lawyer's fees may consent to be joined by the client as a party to the arbitration. A Petition for Arbitration brought by a client must be signed by the client and any other party included by the client, and shall be filed with the Wyoming State Bar, P.O. Box 109, Cheyenne, Wyoming 82003.

(b) Committee Review. Within 10 days of receipt of the Petition, the Chair will review the Petition to determine if it is properly completed and if the Committee has jurisdiction. If the Petition is not properly completed, the Chair will return it to the Petitioner and specify what clarification or additional information is required. If the Committee does not have jurisdiction, the Petitioner shall be so advised.

(c) Service of Petition; Response. Within five days of the determination that the Committee has jurisdiction, a copy of the Petition, and opening letter shall be served on the Respondent by certified mail, return receipt requested. A copy of the Petition for Arbitration and opening letter shall also be served upon the law firm, if any, with which a lawyer-party is associated. Within 20 days after receipt of the Petition and opening letter, the Respondent shall file a response with the Committee at the office of the Wyoming State Bar which shall forward a copy to all other parties and the Chair.

(d) Failure of a Lawyer Respondent to Respond. Failure of a lawyer Respondent to file the Fee Arbitration Response Form shall not delay the scheduling of a hearing; however, in any such case the panel may, in its discretion, refuse to consider evidence offered by the lawyer which would reasonably be expected to have been disclosed in the response.

(e) Client Consent Required. If a lawyer files a Petition for Arbitration, the arbitration shall proceed only if the client files a written consent within 20 days of receipt of the Petition and opening letter.

(f) Informal Resolution. The Chair shall review the Petition and Response and determine whether informal resolution should be attempted. If it appears that the dispute might be resolved by informal contact with Petitioner and Respondent, the Chair shall contact the parties to explore the possibility of an informal resolution of the dispute. If an informal resolution is attained, an order embracing the terms of the informal resolution shall be prepared by the Chair and transmitted to the parties.

(g) Appointment of Panel. If the Chair determines that an attempt at informal resolution would be ineffectual, or if an attempt at informal resolution is unsuccessful within 21 days after receipt of the Response to the Petition, then the Chair shall appoint a panel and mail to the parties written notification of the name(s) of the panel member(s) assigned to hear the matter. A copy of the written notification shall be mailed to the panel member(s).

(Added May 10, 2016, effective October 1, 2016.)

Rule 5. Hearing [Effective October 1, 2016.]

(a) Notice of Hearing. The panel shall set the date, time and place for the hearing. The panel shall send notice of the hearing to the parties not less than 30 but no more than 60 days in advance of the hearing date, unless otherwise agreed by the parties. To the extent feasible, the hearing shall be held no more than 90 days after the written notification of panel assignment required by Rule 4(g).

(b) Representation by Counsel. Any party may be represented by counsel.

(c) Recording of Proceedings. A party to the proceedings may make arrangements to have the hearing reported at the party's own expense, provided notice is given to the other parties and the panel at least five days prior to the scheduled hearing. If a party orders a transcript, that party shall provide a copy of the transcript to the panel free of charge. Any other party is entitled at his or her own expense to acquire a copy of the transcript by making arrangements directly with the reporter. A panel, in its discretion, may make arrangements to have a hearing reported and the parties may obtain a copy at their own expense.

(d) Continuances. For good cause shown, a panel may continue a hearing upon the written request of a party or upon the panel's own motion.

(e) Oaths and Affirmations. The testimony of witnesses shall be by oath or affirmation.

(f) Panel Quorums. All three arbitrators shall be required for a quorum where the panel consists of three members. A panel of three arbitrators shall act with the concurrence of at least two arbitrators.

(g) Appearance; Failure of a Party to Appear. At the panel's discretion, a party may be permitted to appear by telephonic conference call, video conference, computer-facilitated conference, or similar telecommunications equipment, provided all persons participating in the hearing can simultaneously hear each other during the hearing. Appearance by a party at a scheduled hearing shall constitute waiver by said party of any deficiency with respect to the giving of notice of hearing. The panel may proceed in the absence of any party or representative who, after due notice, fails either to be present or to obtain a continuance. A decision shall not be made solely on the default of a party. The panel shall require parties who are present to submit such evidence as the panel may require to issue a decision.

(h) Waiver of Personal Appearance. Any party may waive personal appearance and submit testimony and exhibits by written declaration under oath to the panel. Such declarations shall be filed with the panel at least 10 days prior to the hearing. If all parties, in writing, waive appearances at a hearing, the matter may be decided on the

basis of written submissions. If the panel concludes that oral presentations are necessary, the panel may schedule a hearing.

(i) Testimony. At the panel's discretion, a witness may be permitted to testify by affidavit, deposition, telephonic conference call, video conference, computer-facilitated conference, or similar telecommunications equipment.

(j) Stipulations. Agreements between the parties as to issues not in dispute and the voluntary exchange of documents prior to the hearing are encouraged.

(k) Evidence. The panel shall accept such evidence as is relevant and material to the dispute and request additional evidence as necessary to understand and resolve the dispute. The Wyoming Rules of Evidence need not be strictly followed. The parties shall be entitled to be heard, to present evidence and to cross-examine parties and witnesses. The panel shall judge the weight, competence, credibility, relevance and materiality of the evidence.

(*l*) Subpoenas. Upon request of a party and for good cause shown, or on its own initiative, the panel may issue subpoenas for witnesses or documents necessary to a resolution of the dispute. The requesting party shall be responsible for service of the subpoenas.

(m) Reopening of Hearing. For good cause shown or upon its own initiative, the panel may reopen the hearing at any time before a decision is issued.

(n) Death or Incompetency of a Party. In the event of death or incompetency of a party, the personal representative of the deceased party or the guardian or conservator of the incompetent may be substituted.

(o) Burden of Proof. The burden of proof shall be on the lawyer to prove the reasonableness of the fee, as required by Rule 1.5 of the Wyoming Rules of Professional Conduct, by a preponderance of the evidence.

(p) Discovery. Upon the written request of a party or the panel's own motion, discovery may be allowed to the extent deemed necessary by the panel at its sole discretion. Any request for discovery shall be submitted at least 30 days prior to a scheduled hearing.

(Added May 10, 2016, effective October 1, 2016.)

Rule 6. Decision [Effective October 1, 2016.]

(a) Form of Decision. The panel's decision shall be in writing and shall include a clear statement of the amount in dispute, whether and to whom monies are due, and a brief explanation of the decision.

(b) Issuance of Decision. The panel shall make all reasonable efforts to render its decision promptly and not later than 30 days from the close of the hearing or from the end of any time period permitted by the panel for the filing of supplemental briefs or other materials. The arbitrator or panel chair shall forward the decision to the Committee which shall serve a copy of the decision on each party to the arbitration.

(c) Modification of Decision.

(1) On application to the panel by a party to a fee dispute, the panel may modify or correct a decision if:

(i) there was an error in the computation of figures or a mistake in the description of a person, thing, or property referred to in the decision;

(ii) the decision is imperfect in a matter of form not affecting the merits of the proceeding; or

(iii) the decision needs clarification.

(2) Any party may file an application for modification with the panel within 20 days after service of the decision and shall serve a copy of the application on all other parties. An objection to the application must be filed with the panel within 10 days after service of the application for modification.

(3) An application for modification shall not extend the 30 day time period to seek trial de novo under these rules.

(d) Retention of Files. The Committee shall maintain all fee arbitration files for a period of three years from the date a decision is issued.
(Added May 10, 2016, effective October 1, 2016.)

Rule 7. Effect of decision; enforcement [Effective October 1, 2016.]

(a) Compliance with Decision.

(1) Where the parties have agreed to be bound by the arbitration or have settled the dispute, the parties shall have 30 days from service of the written decision or the date the stipulation of settlement is signed by the parties to comply with the decision or settlement unless the written decision expressly provides otherwise.

(2) Where there is no agreement to be bound by the arbitration, any party is entitled to a trial de novo if sought within 30 days from service of the written decision, except that if a party willfully fails to appear at the arbitration hearing in the manner set forth in Rule 5(g) and (h), that party shall not be entitled to a trial de novo. The determination of willfulness shall be made by the court. The party who failed to appear at the arbitration shall have the burden of proving that the failure to appear was not willful. In making its determination, the court may consider any findings made by the arbitrators on the subject of a party's failure to appear. If a trial de novo is not sought within 30 days, the decision becomes binding.

(b) Trial De Novo.

(1) If there is an action pending, the trial de novo shall be initiated by filing a rejection of arbitration award and request for trial in that action within 30 days from service of the written decision.

(2) If no action is pending, the trial de novo shall be initiated by the commencement of an action in the court having jurisdiction over the amount in controversy within 30 days from the service of the written decision.

(3) The party seeking a trial de novo shall be the prevailing party if that party obtains a judgment more favorable than that provided by the arbitration award, and in all other cases the other party shall be the prevailing party. The prevailing party may, in the discretion of the court, be entitled to an allowance for reasonable attorney's fees and costs incurred in the trial de novo, which allowance shall be fixed by the court. In fixing the attorney's fees, the court shall consider the decision and determinations of the arbitrators, in addition to any other relevant evidence.

(4) Except as provided in this rule, the decision and determinations of the arbitrators shall not be admissible in any action or proceeding and shall not operate as collateral estoppel or res judicata. Arbitrators shall not be called as witnesses.

(c) Petition to Confirm, Correct, or Vacate the Decision.

(1) If a civil action has been stayed pursuant to these rules, any petition to confirm, correct, or vacate the decision shall be filed with the court in which the action is pending, and shall be served in accordance with the Wyoming Rules of Civil Procedure.

(2) If no action is pending in any court, the decision may be confirmed, corrected, or vacated by petition to the court having jurisdiction over the amount of the decision, in accordance with the Wyoming Rules of Civil Procedure.

(3) A court confirming, correcting or vacating a decision under these rules may award to the prevailing party reasonable fees and costs including, if applicable, fees or costs on appeal, incurred in obtaining confirmation, correction or vacation of the award. The party obtaining judgment confirming, correcting, or vacating the decision shall be the prevailing party except that, without regard or consideration of who the prevailing party may be, if a party did not appear at the arbitration hearing in the matter provided by these rules, that party shall not be entitled to attorney's fees or costs upon confirmation, correction, or vacation of the award.

(Added May 10, 2016, effective October 1, 2016.)

Rule 8. Confidentiality [Effective October 1, 2016.]

(a) Confidentiality of Proceedings. Except as may be otherwise necessary for compliance with these rules or to take ancillary legal action with respect thereto, all records, documents, files, proceedings and hearings pertaining to the arbitration of any dispute under these rules shall be confidential and will be closed to the public, unless ordered open by a court upon good cause shown, except that a summary of the facts, without reference to the parties by name, may be publicized in all cases once the proceeding has been formally closed.

(b) Confidentiality of Information. A lawyer may reveal information relating to the representation of the client to the extent necessary to establish his or her fee claim or to defend against a client's claim. In no event shall such disclosure be deemed a waiver of the confidential character of such matters for any other purpose.

(Added May 10, 2016, effective October 1, 2016.)

Rule 9. Immunity [Effective October 1, 2016.]

(a) Parties and Witnesses. Parties and witnesses shall have such immunity as is applicable in a civil action.

(b) Committee members; Arbitrators; Staff. Members of the Committee, panels and staff shall be immune from suit for any conduct in the course and scope of their official duties.

(Added May 10, 2016, effective October 1, 2016.)

Rule 10. Filing and service [Effective October 1, 2016.]

(a) Method. All documents shall be filed with the Committee at the office of the Wyoming State Bar, P.O. Box 109, Cheyenne, Wyoming 82003. Concurrent with filing a document other than the original Petition for Arbitration, the party filing the document shall serve a complete copy of the document by mailing it to all other parties at the mailing address last given to the Committee.

(b) Official Address of Lawyer. Service on an individual lawyer shall be at the latest address shown on the official membership records of the Wyoming State Bar. Service on a law firm shall be at the address as shown in the Petition for Arbitration Form unless the law firm designates a lawyer to be responsible for the arbitration, in which case, service shall be at the designee's latest address shown on the official membership records of the Wyoming State Bar. Service shall be in accordance with Rule 10(a) above.

(c) Service on Represented Parties. If either party is represented by counsel, service shall be on the party's counsel at the latest address shown on the official membership records of the Wyoming State Bar.

(Added May 10, 2016, effective October 1, 2016.)