

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D., 1986

In the matter of the amend-)
ment of Rule 5, Rule 6 and)
the abrogation of Rule 7,)
Rules Governing Contingent)
Fees for Members of the)
Wyoming State Bar)

~~IN THE SUPREME COURT~~
STATE OF WYOMING
FILED

FEB 2 1987

Mr. J. F. Conrad
CLERK

ORDER

This court, on May 9, 1986, having appointed from the members of the Wyoming State Bar and the Wyoming judiciary, a special ad hoc committee to offer advise and recommendations to the Wyoming Supreme Court with respect to appropriate rules or amendments to rules treating with contingent fees; the members of that committee being David H. Carmichael, Chairman, Honorable Joseph F. Maier, Honorable Gary P. Hartman, Honorable Donald H. Hall, Byron Hirst, James E. Fitzgerald, Harry L. Harris, and John Daly; and,

The members of the committee having conducted research, conferred among themselves on many occasions and conferred with the court; having presented to the court their recommendations for the amendment of the above rules; and the court having reviewed the recommendations of the committee and being duly advised in the premises;

NOW THEREFORE, IT IS ORDERED by the court that the following rules be amended, to wit:

Rule 5, Rules Governing Contingent Fees for Members of the Wyoming State Bar, be amended by deleting the language of the present rule and adopting the language, as attached;

Rule 6, Rules Governing Contingent Fees for Members of the Wyoming State Bar, be amended by deleting the language of the present rule and adopting the language, as attached;

Rule 7, Rules Governing Contingent Fees for Members of the Wyoming State Bar, be and it is hereby abrogated;

IT IS FURTHER ORDERED that said rules be published in the Advance Sheets of the Pacific Reporter and thereafter in the Wyoming Reporter; that said rules shall become effective sixty (60) days after the publication in the Advance Sheets of the Pacific Reporter; and thereupon spread at length on the journal of this court.

IT IS FURTHER ORDERED, that the members of the special ad hoc committee be commended for the excellence of their work and that the gratitude of the court be extended to each member.

Dated this 31st day of January, 1987.

By the Court


C. Stuart Brown
Chief Justice

Contingent Fees

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.

Contingent Fees

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