

RETAINER AGREEMENT

1. Names and Addresses of parties entering into agreement.

THIS AGREEMENT FOR LEGAL SERVICES by and between

(you, the Client), and

(the Law Firm)

constitutes a binding legal contract and should be reviewed carefully.

2. Nature of the services to be rendered.

(a) This Retainer Agreement confirms that you have retained this firm as your attorneys to represent you in negotiating an agreement with your husband/wife, if that is reasonably possible; or, if not, to represent you in a matrimonial action.

(b) It is further understood that: (1) The retainer fee does not include any services rendered in Appellate Courts or any actions or proceedings other than the action for which this office has been retained; (2) With respect to the matter which is specified above, this Retainer Agreement and any sums paid to this firm pursuant hereto, do not cover any services relative to any appeal or any other services which might be required following the entry of a final judgment or order, including but not limited to such matters as enforcement or modification. Our representation shall terminate with the entry of final judgment in your matter, unless extended by mutual agreement between us in writing.

(c) The Client authorizes the Law Firm to take any steps which, in the sole discretion of the firm, are deemed necessary or appropriate to protect the Client's interest in the matter.

3. Amount of the advance retainer, if any, and what it is intended to cover.

(a) In order for us to begin our representation you have agreed to pay us and we have agreed to accept a retainer payment of \$. This retainer payment does not necessarily represent the amount of the overall fee which you may incur by virtue of our services. The amount of our eventual fee will be based upon our regular schedule of established hourly time charges, along with any out-of-pocket disbursements (such as court costs, messenger services, transcripts of proceedings, long distance telephone calls, telefaxes, process service fees, mileage, deposition and court transcripts, and excess postage) which are incurred in your behalf,

(b) The Client further understands that the hourly rates apply to all time expended relative to the Client's matter including but not limited to, office meetings and confer-

ences, telephone calls and conferences, either placed by or placed to the client, or otherwise made or had on the Client's behalf or related to the Client's matter, preparation, review and revision of correspondence, pleadings, motions, disclosure demands and responses, affidavits and affirmations, or any other documents, memoranda, or papers relative to the Client's matter, legal research, court appearances, conferences, file review, preparation time, travel time, and any other time expended on behalf of or in connection with the Client's matter.

4. The circumstances under which any portion of the advance retainer may be refunded. Should the attorney withdraw from the case or be discharged prior to the depletion of the advance retainer, the written retainer agreement shall provide how the attorney's fees and expenses are to be determined, and the remainder of the advance retainer shall be refunded to the client.

(a) In the event that we obtain a disposition of your matrimonial matter, either by way of a settlement agreement (termed separation agreement or stipulation of settlement) or by judgment by the court of the issues involved in your case, the aforementioned retainer fee [or the sum of \$] shall also be the minimum fee charged to you, i.e., there will be no refund of the retainer fee [or the sum of \$]. However, notwithstanding the above, if you discontinue our services prior to a disposition of your matter by agreement or judgment of the court, or if this firm is relieved as your attorneys by court order, any unearned portion of the retainer fee you advanced to this firm shall be refunded to you.

An example of how the minimum fee operates is as follows: If the Law Firm resolves the matter with the expenditure of only 4 hours of time by a partner, and 6 hours of time expended by an associate attorney, there would be no refund to the client even though the time charges add up to less than the minimum fee.

Notwithstanding the above, if the attorney-client relationship is terminated without your matter having been concluded, e.g., if you and your spouse were to reconcile and the action was discontinued, or if you were to discharge the Law Firm as your attorneys, or if the Law Firm were to withdraw its representation, a fair and reasonable fee would be determined in accordance with legally accepted standards. At present, the legally recognized elements of a reasonable fee, as set forth in the Code of Professional Responsibility, are as follows:

- The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly.
- The likelihood, if apparent or made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer. (You should know that the Law Firm, by accepting retention as your attorney, is clearly precluded from representing the opposing party against you.)

- The fee customarily charged in the locality for similar legal services.
- The amount involved and the results obtained.
- The time limitations imposed by the client or by circumstances.
- The nature and length of the professional relationship with the client.
- The experience, reputation and ability of the lawyer or lawyers performing the services.
- Whether the fee is fixed or contingent. (You should know that the Code of Professional Responsibility provides: "A lawyer shall not enter into an arrangement for, charge or collect...[a]ny fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of maintenance, support, equitable distribution, or property settlement...")

5. The client's right to cancel the agreement at any time; how the attorney's fee will be determined and paid should the client discharge the attorney at any time during the representation.

(a) You have the absolute right to cancel this Retainer Agreement at any time. Should you exercise this right, you will be charged only the fee expenses (time charges and disbursements) incurred within that period, based upon the hourly rates set forth in this Retainer Agreement, and the balance of the retainer fee, if any, will be promptly refunded to you.

6. How the attorney will be paid through the conclusion of the case after the retainer is depleted; whether the client will be asked to pay another lump sum.

(a) You agree to pay us such additional fees and to reimburse us for our advances on your behalf that may be due from time to time not later than _____ days from the date that we shall submit a bill to you for same. If an amount due to us is not paid within _____ days after our statement to you of the amount due, interest at the rate of _____ % per annum (or interest at the prevailing statutory rate as set forth in the Civil Practice Law and Rules) shall be added to the balance due to us.

7. The hourly rate of each person whose time may be charged to the client; any out-of-pocket disbursements for which the client will be required to reimburse the attorney. Any changes in such rates or fees shall be incorporated into a written agreement constituting an amendment to the original agreement, which must be signed by the client before it may take effect.

(a) The retainer fee shall be credited toward an hourly rate of \$ _____ per hour for time I expend; \$ _____ per hour for time other partners expend; \$ _____ per hour for time expended by associates in this office, and \$ _____ per hour for the time expended by paralegals in this office.

(b) In addition to the foregoing, your responsibility will

include direct payment or reimbursement of this firm for disbursements advanced on your behalf, the same to include, but not necessarily be limited to, court filing fees, recording fees, charges of process servers, travel expenses, copying costs, messenger services, necessary secretarial overtime, transcripts and the customary fees of stenographers referable to examinations before trial in the event such examinations are utilized.

(c) The hourly rates set forth in this Retainer Agreement will remain in effect throughout the period of our representation for the matter set forth in this Retainer Agreement, unless changed by mutual consent of you and our firm, in which event any modification of the hourly rates shall be reduced to writing and signed by you and the Law Firm.

8. Any clause providing for a fee in addition to the agreed-upon rate, such as a reasonable minimum fee clause, must be defined in plain language and set forth the circumstances under which such fee may be incurred and how it will be calculated.

[SEE CLAUSES UNDER NO. 4, *supra*]

9. Frequency of itemized billing, which shall be at least every 60 days; the client may not be charged for time spent in discussion of the bills received.

You will be billed periodically, generally each month but in no event less frequently than every 60 days. Included in the billing will be a detailed explanation of the services rendered, by whom rendered, and the disbursements incurred by our firm in connection with your matter. Upon receipt of our bill, you are expected to review the bill and promptly bring to our attention any objections you may have to the bill. While we strive to keep perfectly accurate time records, we recognize the possibility of human error, and we shall discuss with you any objections you raise to our bill. You will not be charged for time expended in discussing with us any aspect of the bill rendered to you.

10. Client's right to be provided with copies of correspondence and documents relating to the case, and to be kept apprised of the status of the case.

(a) We shall keep you informed of the status of your case, and agree to explain the laws pertinent to your situation, the available course of action, and the attendant risks. We shall notify you promptly of any developments in your case, including court appearances, and will be available for meetings and telephone conversations with you at mutually convenient times. We do insist that appointments be made for personal visits to our offices. Copies of all papers will be supplied to you as they are prepared (unless you request to the contrary), and you will be billed a reasonable photocopy charge (at present, _____ cents per page) for these materials which will be included in your periodic billing.

11. Whether and under what circumstances the attorney might seek a security interest from the client, which can be obtained only upon court approval and on notice to the adversary.

(a) While we expect to be paid the fees due us in timely fashion, in situations where the Client does not have funds readily available to pay additional fees as they accrue, we may, as an accommodation, agree to take a security interest in property in lieu of immediate payment. A security interest may take the form of a confession of judgment, promissory note, or mortgage upon specified property. In either event, a lien will attach to your property. In the case of your marital residence, any such security interest shall be nonforeclosable, i.e., we shall not force a sale of your home but would be paid at the time you sell the premises. You are advised that any such security interest can be granted to us only with the permission of the justice assigned to your case upon an application on notice to the opposing party, and after an application has been made for your spouse to pay the outstanding fees.

(b) In the event such application for payment of counsel fees by your spouse and a security interest for the fees due this firm is made to the Court, the Client agrees to cooperate in connection with such application and to consent to the relief being requested from the Court. Failure on the part of the Client to so cooperate and consent shall be deemed as a basis for withdrawal by the Law Firm from representation of the client.

12. Under what circumstances the attorney might seek to withdraw from the case for nonpayment of fees, and the attorney's right to seek a charging lien from the court.

(a) You are advised that if, in the judgment of this firm, we decide that there has been an irretrievable breakdown in the attorney-client relationship, or a material breach of the terms of this Retainer Agreement, we may decide to make application to the court in which your action is pending to be relieved as your attorneys. In such event, you will be provided with notice of the application and an opportunity to be heard. Should any fees be due and owing to this firm at the time of our discharge, we shall have the right, in addition to any other remedy, to seek a charging lien, i.e., a lien upon the property that is awarded to you as a result of equitable distribution in the final order or judgment in your case. No such lien may attach to maintenance or child support payments.

(b) In the event that any bill from the Law Firm remains unpaid beyond a _____ day period, the Client agrees that the Law Firm may withdraw its representation, at the option of the firm. In the event that an action is pending, and absent your consent, an application must be made to the Court for such withdrawal. Where the fee is unpaid for the period set forth above, the Client acknowledges that in connection with any such withdrawal application, that the account delinquency shall be good cause for withdrawal.

13. Should a dispute arise concerning the attorney's fee, the client may seek arbitration; the attorney shall pro-

vide information concerning fee arbitration in the event of such dispute or upon the client's request.

While we seek to avoid any fee disputes with our clients, and rarely have such disputes, in the event such a dispute does arise, you are advised that you have the right, at your election, to seek arbitration to resolve the fee dispute. In such event, we shall advise you in writing by certified mail that you have 30 days from receipt of such notice in which to elect to resolve the dispute by arbitration, and we shall enclose a copy of the arbitration rules and a form for requesting arbitration. The decision resulting from arbitration is binding upon both you and the Law Firm.

ADDITIONAL DISCRETIONARY PROVISIONS

1. Application for Fees.

(a) Under prevailing law, an application may be made to the court in which your action is pending, either prior to trial or at the trial, for your spouse to pay all or part of your legal expenses incurred and/or to be incurred in this matter. There is no certainty that any such recovery may actually occur, as the application rests in the discretion of the court. In the event such an award of fees is made and collected, the amount collected shall be credited to your bill. At the end of your case (i.e., a final judgment in the matrimonial action) any amount collected that exceeds your billing will be refunded to you. Conversely, you shall remain liable for any balance due to us after crediting any amount collected from your spouse.

2. Appeal (flat fee).

(a) This Retainer Agreement confirms that you have retained this firm to prosecute an appeal to the Appellate Division, Judicial Department, from the judgment (order) granted by Justice of the Supreme Court, _____ County, dated _____

(b) Our fee for legal services on this appeal to the Appellate Division is \$ _____, payable upon your signing of this Retainer Agreement. Disbursements are in addition to the above-mentioned fee and include, but are not limited to, an appellate filing fee of \$ _____, the cost of obtaining trial transcripts, an appellate printer, process servers, messenger service, transportation and photocopies. Disbursements will be billed to you periodically as they are incurred.

(c) The above fee covers only this one appeal to the Appellate Division and not other or further appeals. No motions in any court or any other proceedings are included in the fee.

(d) You understand that your (former) spouse may cross-appeal from all or any part of the judgment (order) of the Supreme Court from which (s)he feels aggrieved. (S)he may also make a claim against you for legal services and expenses in connection with the appeal.

3. Retention of Experts.

(a) This Law Firm may engage, on your behalf, and with your prior consent, the services of an accountant in connection with an examination of the financial circumstances attendant upon your matrimonial action or proceeding. In addition, such other professionals may be utilized as may be required, with your prior consent, including, but not limited to, real estate appraisers and investigators. With regard to the charges which may be levied by such

professionals, the same shall be your responsibility, either directly to such professionals or in reimbursement of this firm.

(b) In order for us to properly protect your interests, and in light of our experience in matrimonial litigation, it is important that we select or at least consent to the experts being retained in your matter. Accordingly, you agree to procure our consent relative to the retention of any experts for your case.

4. Other Attorneys in Firm Rendering Services.

(a) The client understands that no one particular member of the Law Firm is being retained but, rather, the Law Firm, as an entity, is undertaking legal representation of the client pursuant to this Retainer Agreement and that the Law Firm reserves the right to assign and delegate all aspects of such representation as the Law Firm, in its sole discretion, deems appropriate.

(b) Such assignment and delegation may include, but is not limited to, preparation of pleadings, motions, disclosure demands and responses, settlement negotiations, preparation of agreements, preparation and conduct of examinations before trial, court appearance, trial work, and any other matter deemed by the Law Firm to be appropriately delegated.

(c) Likewise, law clerks and paralegals are often called upon to assist in document production, file organization, preparation and review of financial statements and data, and such other duties as are assigned by the Law Firm.

5. Acknowledgement and Understanding.

(a) The client acknowledges that he or she has read this Retainer Agreement in its entirety, has had full opportunity to consider its terms, and has had full and satisfactory explanation of same, and fully understands its terms and agrees to such terms.

(b) The client fully understands and acknowledges that there are no additional or different terms or agreements other than those expressly set forth in this Retainer Agreement.

(c) The client acknowledges that he or she was provided with and read the Statement of Client's Rights and Responsibilities, a copy of which is attached to their Retainer Agreement.

6. Certifications.

We have informed you that pursuant to court rule, we are required, as your attorneys, to certify court papers submitted by you which contain statements of fact, and specifically to certify that we have no knowledge that the substance of the submission is false. Accordingly, you agree to provide us with complete and accurate information which forms the basis of court papers and to certify in writing to us, prior to the time the papers are actually submitted to the court, the accuracy of the court submissions which we prepare on your behalf, and which you shall review and sign.

7. No guarantees.

It is specifically acknowledged by you that the Law Firm has made no representations to you, express or implied, concerning the outcome of the litigation presently pending or hereafter to be commenced between you and your spouse. You further acknowledge that the Law Firm has not guaranteed and cannot guarantee the success of any action taken by the firm on your behalf during such litigation with respect to any matter therein, including without limitation issues of spousal and/or child support, custody and/or visitation, exclusive occupancy of the marital premises, equitable distribution of marital assets, the declaration of separate property, counsel fees and/or a trial.

8. Closing.

You are aware of the hazards of litigation and acknowledge that the Law Firm has made no guarantees in the disposition of any phase of the matter for which you have retained this office.

You acknowledge that pursuant to court rule, a copy of this Retainer Agreement is required to be filed with the court in which your action is pending. You indicate your understanding and acceptance of the above by signing below where indicated.

Dated:

Client:

Law Firm:

I HAVE READ AND UNDERSTAND THE ABOVE,
RECEIVED A COPY AND ACCEPT ALL OF ITS TERMS:

by _____

.....
PRINT OR TYPE CLIENT'S NAME BELOW