

**22 NYCRR § 1400.2. Statement of Client's Rights and Responsibilities.** *An attorney shall provide a prospective client with a statement of client's rights and responsibilities in a form prescribed by the Appellate Divisions, at the initial conference and prior to the signing of a written retainer agreement. If the attorney is not being paid a fee from the client for the work to be performed on the particular case, the attorney may delete from the statement those provisions dealing with fees. The attorney shall obtain a signed acknowledgment of receipt from the client. The statement shall contain the following:*

[Adapted from]

UNIFIED COURT SYSTEM OF THE STATE OF NEW YORK  
STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES

An attorney is providing you with this Statement of Client's Rights and Responsibilities to inform you of what you will be entitled to by law or by custom if you retain the attorney. To help prevent any misunderstanding between you and the attorney, please read this document carefully.

If you ever have any questions about these rights, or about the way your case is being handled once you retain the attorney, you are responsible to ask the attorney about it. Throughout the representation your attorney should be readily available to represent your best interests and to keep you informed about your case.

**Discrimination:** An attorney may not refuse to represent you on the basis of race, creed, color, sex, sexual orientation, age, national origin or disability.

**Competent, courteous, honest & civil:** You are entitled to an attorney who will be capable of handling your case; show you courtesy and consideration at all times; represent you zealously; and preserve the confidences and secrets that you reveal in the course of the relationship, to the extent permitted by law. You are responsible to communicate honestly, civilly and respectfully with your attorney.

**Written retainer agreement:** If you are hiring an attorney you and your attorney are required to sign a written retainer agreement which sets forth in plain language the scope and nature of the relationship and the details of the fee arrangement. Before you sign the retainer agreement, you are responsible to read it and ask the attorney any questions you have; you are entitled to have the attorney clarify in writing any of its terms, or include such additional provisions as you both agree to.

As with any contract, you are entitled to fully understand the proposed rates and the retainer fee that you will be expected to pay, before you sign the retainer agreement. Unless you both specifically agree otherwise for your case, retainer fees paid to attorneys are generally not sufficient to cover all of the time attorneys typically devote to client matters and clients are often called on to supplement the retainer fees that they have paid up front. So please, without a specific agreement otherwise, do not assume that the retainer fee will be the sum total of the fees and costs that you will be required to pay your attorney.

You can, of course, refuse to enter into any fee arrangement that you find unsatisfactory.

**Contingency & flat/minimum fees:** Attorneys may not request a fee that is contingent on the securing of a divorce or is based on the amount of money or property that you obtain in the litigation. Moreover, the attorney may not request a retainer fee that is non-refundable. That is, should you discharge your attorney or should your attorney withdraw from the case (with Court permission) before the retainer has been fully used up, the attorney is entitled to be paid for the work

devoted to your matter and any expenses incurred but must return to you any balance of the retainer that has not been used or earned. However, attorneys may enter into minimum fee arrangements that provide for the payment of a specific minimum amount if the attorney handles your case to its conclusion.

**Staffing:** You are entitled to know the approximate number of attorneys and other legal staff members who will be working on your case at any given time and how much you will be charged for the services of each.

**Payment of fees:** You are entitled to know in advance how you will be asked to pay for legal fees and expenses and how any retainer will be used.

A Court may require you to pay for or contribute to your spouse's legal fees and costs, either at the beginning of the case, before the trial or afterward.

The Court may require your spouse to pay for or contribute to your legal fees and costs however, if your spouse fails to abide by the Court Order, you will still be obligated to pay your attorneys' fees and charges in the first instance.

You are required to pay for court filing fees, process servers' fees, and fees for experts (including the fees they charge for preparing their reports, appearing for depositions and testifying at trial) and other costs and expenses your attorney incurs though, in appropriate circumstances, you might seek reimbursement from your spouse.

**Frivolous conduct:** If you engage in conduct that a Court deems frivolous or meant to intentionally delay your case you could be fined or sanctioned and be responsible for additional fees.

**Estimates:** After your attorney has had a reasonable opportunity to investigate your case you may request, and will then be entitled to receive, an estimate of the approximate future costs of your case. Your attorney must make that estimate in good faith but the anticipated costs may, of course, change based on the facts and circumstances that are later revealed or later develop. There are no guarantees that the cost of your case will be the amount that was originally estimated.

**Itemized bills:** You are entitled to receive from your attorney a written itemized bill on a regular basis, no less often than every 60 days.

You are expected to review the itemized bills your attorney sends you and to raise any objections you have to them and point out any errors you believe they contain in writing in a timely manner. There will be no charge for the time spent discussing, explaining or correcting the bills for you.

**Open & honest communication:** You agree to be honest and truthful in all discussions with your attorney and to provide all of the relevant information and documentation needed to competently prepare your case and represent you. You and your lawyer both agree to make reasonable efforts to

maintain open communication during normal business hours throughout the representation. Your attorney may ask the Court to be relieved from representing you if you are not honest and truthful.

**Kept abreast:** You are entitled to be kept informed of the status of your case, and to be provided with copies of all of the correspondence and documents prepared on your behalf or received from the court or your adversary.

**Discussions of law:** Your attorney is required to discuss with you: (a) the Automatic Orders that go into effect once a party commences an action (by filing a summons in proper form); (b) the Child Support Standards Act that specifies how financial support for children of the marriage is calculated, if you and your spouse have children younger than twenty-one; and (c) the law that governs the financial support of spouses known as "The Maintenance Guidelines Statute."

**Court attendance:** You must be present and on time in court when conferences, oral arguments, hearings and trials are conducted unless your attendance is expressly excused by the Judge or court rule, and it is your right to attend them.

**Objectives:** You are entitled to decide on the objectives to be pursued in your case, and to make the final decision whether to settle your case and on what terms. Your attorney has the right to set out in writing why he or she believes the decisions you are making are not in your best interest and why you should want your case handled differently.

**Withdrawal & fee guarantees:** Your retainer agreement with your attorney must specify under what circumstances your attorney may seek to withdraw from representing you like, for example, if you don't pay your legal fees and charges. If an action or proceeding is pending the court may give your attorney a "charging lien" which entitles your attorney to be paid for the services rendered at the end of the case out of the proceeds of the final order or judgment. In some cases your attorney may exercise a "retaining lien" which might allow the attorney to keep your file as security, subject to any Court proceedings.

You are generally under no legal obligation to sign a confession of judgment or promissory note or to grant a lien or mortgage on your home to pay for legal fees. Your retainer agreement with your attorney must specify whether and under what circumstances you may be asked to do so. Moreover, before any such security interest may be obtained by your

attorney your attorney must receive court approval after your spouse was notified of the attorney's application. Also, an attorney's security interest in the marital residence cannot be foreclosed against you.

**Best efforts but no guarantees:** You are entitled to have your attorney's best efforts exerted on your behalf but your attorney cannot and does not guarantee any particular result for you.

**Escrow:** If you entrust money with an attorney for an escrow deposit in your case, the attorney must safeguard it in a special bank account. You are then entitled to a written escrow agreement, a written receipt, and a complete record concerning the escrowed funds. When the terms of the escrow agreement have been performed, the attorney must promptly remit the escrowed funds to all of the people who are entitled to it.

**Scope of representation:** Please take note of the scope for which you are hiring your attorney. Many retainer agreements provide that the representation will end once a court issues a final judgment. If that is true for you and you wish your lawyer to perform additional services (like for example, filing an appeal or transferring title of property to you) you and the attorney will have to sign a new retainer agreement that sets out the scope of the new or additional duties of your lawyer.

**Property transfers:** If you expect to end up with [sole] ownership of property you either do not now hold title to or property you own jointly with your spouse, be sure to make arrangements for the proper transfer of that property. A matrimonial order awarding you the property or a judgment of divorce awarding you sole possession does not automatically transfer the property into your name in the records of the county clerk, or transfer a co-operative apartment or other lease into your own name. If you want that done, be sure that you make proper arrangements with your attorney or otherwise to have the property properly transferred.

**Fee Disputes:** In the event of a fee dispute, you may have the right to seek arbitration pursuant to Part 137 of the Rules of the Chief Administrative Judge if the dispute involves more than \$1,000.00 and less than \$50,000.00, or you both agree otherwise. Your attorney will then provide you with information about fee-arbitration and will provide it to you at any time on your request.

**I sign below merely to acknowledge that I received a copy of this Statement. My signature below does not obligate me to hire you or pay you any money (unless we otherwise separately agree).**

Receipt Acknowledged:

\_\_\_\_\_  
Attorney's Signature                      October 2, 2020  
Date

\_\_\_\_\_  
Prospective Client's Signature                      Date