

COURT NOTICES

AMENDMENT OF RULE

Supreme Court, Appellate Division

The Judicial Departments of the Appellate Division of the New York State Supreme Court, pursuant to the authority vested in them, do hereby amend, effective February 15, 2019, section 1400.2 of Part 1400 of Title 22 of the Official Compilations of Codes, Rules and Regulations of the State of New York, as follows (new matter underlined, deleted matter in [brackets]):

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:

STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES

[Your] An attorney is providing you with this document to inform you of what you, as a client, are entitled to by law or by custom. To help prevent any misunderstanding between you and [your] 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*, [do not hesitate] *you are responsible* to ask your attorney. [He or she] *Your attorney* should be readily available to represent your best interests and to keep you informed about your case.

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

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 your confidences and secrets that [are revealed] 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.*

[You] *If you are hiring an attorney you and your attorney* are [entitled] *required to sign* a written retainer agreement which must set forth, in plain language, the 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 before you sign it.* At your request, and before you sign the agreement, you are entitled to have your attorney clarify in writing any of its terms, or include additional provisions.

You are entitled to fully understand the proposed rates and retainer fee before you sign a retainer agreement, as in any other contract. *The retainer fee you pay to the attorney, as is written in the retainer agreement, may not be enough money to pay for all the time that the attorney works on your case.*

You may refuse to enter into any fee arrangement that you find unsatisfactory.

[Your] An attorney may not request a fee that is contingent on the securing of a divorce or on the amount of money or property that may be obtained.

[Your] An attorney may not request a retainer fee that is non-

refundable. That is, should you discharge [your] the attorney, or should [your] *the attorney* withdraw from the case *with Court permission*, before the retainer [is] *has been* used up, [he or she] *the attorney* is entitled to be paid commensurate with the work performed on your case and any expenses [but must return the balance of the retainer to you]. *The attorney must return to you any balance of the retainer that has not been used.* However, [your] the attorney may enter into a minimum fee arrangement with you that provides for the payment of a specific amount below which the fee will not fall based upon *the attorney's* handling of the case to its conclusion.

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 what you will be charged for the services of each.

You are entitled to know in advance how you will be asked to pay legal fees and expenses, and how the retainer, if any, will be spent.

You may be responsible at the beginning of the case or before or after the trial to contribute to or pay the other party's attorney's fees and other costs if the Court has ordered you to do so.

The other party may be responsible to contribute to or to pay your attorney's fees, if the Court orders the other party to do so. However, if the other party fails to pay the Court ordered fee, you are still responsible for the fees owed to your attorney and experts in your case.

You are required to pay for court filing fees, process servers as well as fees for expert reports, testimony, depositions and/or trial testimony and you may seek reimbursement from the other party.

If you engage in conduct which is found to be frivolous or meant to intentionally delay the case you could be fined or sanctioned and/or responsible for additional fees.

At your request, and after your attorney has had a reasonable opportunity to investigate your case, you are entitled to be given an estimate of approximate future costs of your case[, which]. *That estimate shall be made in good faith but may be subject to change due to facts and circumstances [affecting the] that develop during your case. There are no guarantees that the cost of your case will be as originally estimated.*

You are entitled to receive a written, itemized bill on a regular basis, at least every 60 days.

You are expected to review the itemized bills sent [by counsel] *to you by your attorney*, and to raise any objections or errors in a timely manner *in writing*. Time spent in discussion or explanation of bills will not be charged to you.

You are [expected] *responsible to be honest and truthful* in all discussions with your attorney, and to provide all relevant information and documentation to enable [him or her] *her or him* to competently prepare your case. *Attorneys and clients must make reasonable efforts to maintain open communication during business hours throughout the representation. An attorney may seek to be relieved as your attorney if you are not honest and truthful with her or him.*

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

Your attorney is required to discuss the following with you: a) the automatic orders that are in effect once either party files a summons with notice; b) the law that provides for the financial support of the children, the Child Support Standards Act, if you and the other party

have children under the age of twenty-one; and c) the law that provides for the financial support of the parties, the Maintenance Guidelines Statute.

You [have the right] *are responsible* to be present *and on time* in court at the time that conferences [are held], *oral arguments, hearings and trials are conducted unless excused by the Judge or the part rules of the assigned Judge.*

You are entitled to make the ultimate decision on the objectives to be pursued in your case, and to make the final decision regarding the settlement of your case. *Your attorney has the right to send you written communications if your attorney disagrees with how you want your case handled.*

Your attorney's written retainer agreement must specify under what circumstances he or she might seek to withdraw as your attorney for nonpayment of legal fees. If an action or proceeding is pending, the court may give your attorney a "charging lien," which entitles your attorney to payment for services already 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, subject to Court proceedings, may allow them to keep your file as security.

You are under no legal obligation to sign a confession of judgment or promissory note, or to agree to a lien or mortgage on your home to [cover] pay for legal fees. Your attorney's written retainer agreement must specify whether, and under what circumstances, such security may be requested. In no event may such security interest be obtained by your attorney without prior court approval and notice to your adversary. An attorney's security interest in the marital residence cannot be foreclosed against you.

You are entitled to have your attorney's best efforts exerted on your behalf, but no particular results can be guaranteed.

If you entrust money with an attorney for an escrow deposit in your case, the attorney must safeguard the escrow in a special bank account. You are entitled to a written escrow agreement, a written receipt, and a complete record concerning the escrow. When the terms of the escrow agreement have been performed, the attorney must promptly make payment of the escrow to all persons who are entitled to it.

Once your Judgment of Divorce is signed, if you are re-retaining an attorney you must sign a new retainer agreement.

If you are expecting your attorney to prepare and file documents related to the transfer of a house, co-op or lease, that must be specified in the retainer agreement. The signing of an agreement or Court order that transfers title does not transfer a co-op apartment or a house. A separate document must be prepared and filed.

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 where the dispute involves a sum of more than \$1,000.00 or less than \$50,000.00 unless you agree otherwise. Your attorney will provide you with the necessary information regarding arbitration in the event of a fee dispute, or upon your request.