

RETAINER AGREEMENTS

**RULES
SAMPLES
CASES**

PART 1400. PROCEDURE FOR ATTORNEYS IN DOMESTIC RELATIONS MATTERS

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§ 1400.1. Application

This Part shall apply to all attorneys who, on or after November 30, 1993, undertake to represent a client in a claim, action or proceeding, or preliminary to the filing of a claim, action or proceeding, in either Supreme Court or Family Court, or in any court of appellate jurisdiction, for divorce, separation, annulment, custody, visitation, maintenance, child support, or alimony, or to enforce or modify a judgment or order in connection with any such claims, actions or proceedings. This Part shall not apply to attorneys representing clients without compensation paid by the client, except that where the client is other than a minor, the provisions of section 1400.2 shall apply to the extent they are not applicable to compensation.

§ 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 acknowledgement of receipt from the client. The statement shall contain the following:

STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES

Your 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 attorney please read this document carefully.

If you ever have any questions about these rights, or about the way your case is being handled, do not hesitate to ask your attorney. He or she should be readily available to represent your best interests and 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 in the course of the relationship.

You are entitled to a written retainer agreement which must set forth, in plain language, the nature of the relationship and the details of the fee arrangement. 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.

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

Your 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 attorney may not request a retainer fee that is nonrefundable. That is, should you discharge your attorney, or should your attorney withdraw from the case, before the retainer is used up, he or she 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. However, your attorney may enter into a minimum fee arrange-

ment with you that provides for the payment of a specific amount below which the fee will not fall based upon the 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.

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 estimate shall be made in good faith but may be subject to change due to facts and circumstances affecting the case.

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, and to raise any objections or errors in a timely manner. Time spent in discussion or explanation of bills will not be charged to you.

You are expected to be truthful in all discussions with your attorney, and to provide all relevant information and documentation to enable him or her to competently prepare your case.

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.

You have the right to be present in court at the time that conferences are held.

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'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.

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 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.

In the event of a fee dispute, you may have the right to seek arbitration. Your attorney will provide you with the necessary information regarding arbitration in the event of a fee dispute, or upon your request.

Receipt Acknowledged:

Attorney's signature

Client's signature

Date

§ 1400.3. Written Retainer Agreement

An attorney who undertakes to represent a party and enters into an arrangement for, charges or collects any fee from a client shall execute a written agreement with the client setting forth in plain language the terms of compensation and the nature of services to be rendered. The agreement, and any amendment thereto, shall be signed by both client and attorney, and, in actions in Supreme Court, a copy of the signed agreement shall be filed with the court with the statement of net worth. Where substitution of counsel occurs after the filing of the net worth statement, a signed copy of the attorney's retainer agreement shall be filed with the court within 10 days of its execution. A copy of a signed amendment shall be filed within 15 days of signing. A duplicate copy of the filed agreement and any amendment shall be provided to the client. The agreement shall be subject to the provisions governing confidentiality contained in Domestic Relations Law, section 236(1). The agreement shall contain the following information:

RETAINER AGREEMENT

1. Names and addresses of the parties entering into the agreement;
2. Nature of the services to be rendered;
3. Amount of the advance retainer, if any, and what it is intended to cover;

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4. 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;

5. 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 course of the representation;

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

7. 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;

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.

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;

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;

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;

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.

13. Should a dispute arise concerning the attorney's fee, the client may seek arbitration; the attorney shall provide information concerning fee arbitration in the event of such dispute or upon the client's request.

§ 1400.4. Nonrefundable Retainer Fee

An attorney shall not enter into an arrangement for, charge or collect a nonrefundable retainer fee from a client. An attorney may enter into a "minimum fee" arrangement with a client that provides for the payment of a specific amount below which the fee will not fall based upon the handling of the case to its conclusion.

§ 1400.5. Security Interests

(a) An attorney may obtain a confession of judgment or promissory note, take a lien on real property, or otherwise obtain a security interest to secure his or her fee only where:

(1) the retainer agreement provides that a security interest may be sought;

(2) notice of an application for a security interest has been given to the other spouse; and,

(3) the court grants approval for the security interest after submission of an application for counsel fees.

(b) Notwithstanding the provisions of subdivision (a) of this section, an attorney shall not foreclose on a mortgage placed on the marital residence while the spouse who consents to the mortgage remains the titleholder and the residence remains the spouse's primary residence.

§ 1400.6. [Deleted]

§ 1400.7. Fee Arbitration

In the event of a fee dispute between attorney and client, the client may seek to resolve the dispute by arbitration pursuant to a fee arbitration program established by the Chief Administrator of the Courts and subject to the approval of the justices of the Appellate Divisions.

APPENDIX A. STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES

Your 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 attorney please read this document carefully.

If you ever have any questions about these rights, or about the way your case is being handled, do not hesitate to ask your attorney. He or she should be readily available to represent your best interests and 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 in the course of the relationship.

You are entitled to a written retainer agreement which must set forth, in plain language, the nature of the relationship and the details of the fee arrangement. 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.

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

Your 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 attorney may not request a retainer fee that is nonrefundable. That is, should you discharge your attorney, or should your attorney withdraw from the case, before the retainer is used up, he or she 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. However, your 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 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.

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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.

You have the right to be present in court at the time that conferences are held.

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.

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Receipt Acknowledged:

Attorney's signature	Client's signature
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**APPENDIX B. STATEMENT OF CLIENT'S RIGHTS
AND RESPONSIBILITIES**
[To Be Used Only When Representation Is Without Fee]

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Receipt Acknowledged:

Attorney's signature

Client's signature

Date

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PART 1215. WRITTEN LETTER OF ENGAGEMENT

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1215.2.	Exceptions.

§ 1215.1. Requirements

(a) Effective March 4, 2002, an attorney who undertakes to represent a client and enters into an arrangement for, charges or collects any fee from a client shall provide to the client a written letter of engagement before commencing the representation, or within a reasonable time thereafter (i) if otherwise impracticable or (ii) if the scope of services to be provided cannot be determined at the time of the commencement of representation. For purposes of this rule, where an entity (such as an insurance carrier) engages an attorney to represent a third party, the term "client" shall mean the entity that engages the attorney. Where there is a significant change in the scope of services or the fee to be charged, an updated letter of engagement shall be provided to the client.

(b) The letter of engagement shall address the following matters:

- (1) Explanation of the scope of the legal services to be provided;
- (2) Explanation of attorney's fees to be charged, expenses and billing practices; and, where applicable, shall provide that the client may have a right to

arbitrate fee disputes under Part 137 of the Rules of the Chief Administrator.

(c) Instead of providing the client with a written letter of engagement, an attorney may comply with the provisions of subdivision (a) by entering into a signed written retainer agreement with the client, before or within a reasonable time after commencing the representation, provided that the agreement addresses the matters set forth in subdivision (b).

§ 1215.2. Exceptions

This section shall not apply to (1) representation of a client where the fee to be charged is expected to be less than \$3000, (2) representation where the attorney's services are of the same general kind as previously rendered to and paid for by the client, or (3) representation in domestic relations matters subject to Part 1400 of the Joint Rules of the Appellate Division (22 NYCRR) or (4) representation where the attorney is admitted to practice in another jurisdiction and maintains no office in the State of New York, or where no material portion of the services are to be rendered in New York.

November __, 2014

RETAINER AGREEMENT

[CLIENT NAME REDACTED]

Dear _____:

This letter, when signed by us both, will confirm the agreement between us -- i.e., you and Cohen Clair Lans Greifer & Thorpe LLP ("we", "us", "our"). As I mentioned, we are required to prepare, and have prepared, this retainer agreement in accordance with our understanding of rules that have been promulgated for matrimonial actions in New York State.

I. **Nature of Services to be Rendered.** We will represent you in connection with your matrimonial matter. We will not enter any settlement nor will we commence a lawsuit without your prior consent. While we will keep you apprised of the status of your matter and will consult with you in advance on all major steps which need to be taken on your behalf, you agree that we may take any steps that in our professional judgment we deem appropriate to protect or advance your interests. We will explain to you the laws pertinent to your situation, available options and the attendant risks. This retainer agreement and any sums paid to our 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 or settlement in your matter, unless extended by mutual agreement between us in writing.

II. **Fees, Disbursements and Billing Arrangements**

A. **Hourly Billing Rates.** Our fees to you are based on time spent working for you. Time is recorded in increments of tenths of an hour. The hourly rates charged by the partners, associates and paralegals in our firm for calendar years 2014 and 2015 are set forth on Schedule A. We will notify you of further changes after they occur, and you agree to such reasonable increases.

B. **Applicable Services.** You understand that the hourly rates apply to all time expended on your matter, including but not limited to, office meetings and conferences, telephone calls and conferences, either placed by or to you, or otherwise made or had on your behalf or related to your matter, preparation, review and revision of correspondence, pleadings, motion, disclosure demands and responses, affidavits and affirmations, or any other documents, memoranda, or papers relative to your matter, legal research, court appearances, conferences, file review, preparation time, travel time, and any other time expended on behalf of or in connection with your matter.

[CLIENT NAME]

November __, 2014

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C. **Delegation of Responsibility.** No one particular member of this firm is being retained but rather, the law firm, as an entity, is undertaking legal representation pursuant to this retainer agreement and I reserve the right to assign and delegate all aspects of such representations as I deem appropriate. Such assignment and delegation may include, but is not limited to, document review, financial analysis, preparation of agreements, and any other matter deemed by the law firm to be appropriately delegated. Likewise, 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 are assigned by the firm. Additionally, from time-to-time, we may supplement our regular staff of associates and/or paralegals with temporary or part-time personnel. These professionals are always under the direct supervision of firm personnel. Such personnel are generally billed at rates that are commensurate with their status and experience and at a level that is consistent with your regular hourly rates.

D. **Modification of Billing Rates.** The hourly rates for calendar years 2014 and 2015 are set forth on Schedule A. We will notify you of further changes after they occur, and you agree to such reasonable increases.

E. **Disbursements.** Disbursements for which you will also be billed may include, among other things, court costs, process server fees, word processing, photocopying, messenger, telefaxes, postage, toll calls and long distance telephone charges, computerized legal research or other database usage, travel charges, deposition and court reporting and transcription services, filing fees and file storage charges, if you should ask us to store your files after the conclusion of the matter.

F. **Retention of Experts and Consultants.** You are responsible to pay for services rendered in connection with your matter by third parties, such as experts (be they psychiatrists, appraisers, accountants or others) or consultants. Before we contract with experts or consultants, we will notify you of their proposed fee arrangements, including any retainer fees and the rates charged by them, and we will obtain your approval of the hiring.

G. **Retainer Fee.** You have agreed to pay us a retainer fee of \$_____, in advance, to be credited, as hereinafter set forth, against our time and disbursements charged to you. In the event we do not exhaust your retainer, any excess will be reimbursed to you.

H. **Billings Arrangements.** We will send you itemized bills containing a brief description of the services rendered, by whom they were rendered, and the disbursements incurred by our firm in connection with your matter at least every sixty (60) days, but more likely every thirty (30) days.

[CLIENT NAME]

November __, 2014

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I. **Fees at the Conclusion of the Matter.** If at the conclusion of the representation, we have achieved a very favorable outcome, based upon the terms of the settlement or decision, and/or the result was achieved in a cost-effective manner, we shall be entitled to *propose* that we receive a fee above the time charges and disbursements. You will however only be obligated to pay any such proposed fee to the extent that *you agree* it is merited under the circumstances of your matter. No such fee will be paid unless there is mutual consent between us.

III. **Termination of Agreement and of Our Representation of You**

A. **Cancellation.** You have the right to cancel this Agreement at any time.

B. **Termination For Non-Payment of Bills.** If for any reason you do not pay all bills rendered by us to you within thirty (30) days after you receive them, or you refuse to agree to our increased billing rates (if any) as and when they are determined, we reserve the right to: (a) withdraw as your counsel by application to the court in which your action is pending, and/or (b) take all legal and appropriate steps to secure your payment of any unpaid legal fees and disbursements. You acknowledge that in connection with any such withdrawal application, your failure timely to pay our bills will be good cause for withdrawal and you agree to permit our prompt withdrawal. We acknowledge that in no event may a security interest against your property be obtained by us without prior court approval and notice to your spouse's attorney.

C. **Termination For Other Reasons.** If, in our judgment, there has been an irretrievable breakdown in our attorney-client relationship, or a material breach of this Retainer Agreement (or any amendments to it), the firm, at its option, may withdraw from its representation of you. In the event an action is pending, and absent your consent, an application must be made to the court for such withdrawal. You agree that non-payment of fees or disbursements or failure to pay a requested advance retainer is proper cause for our withdrawal. In the event we decide to make application to the court to be relieved as your attorneys, you will be provided with notice of the application and an opportunity to be heard.

D. **Fees In Event of Termination.** Should we withdraw from representing you or be discharged by you prior to the conclusion of your matter and depletion of the retainer fee, our fees shall be determined by multiplying the time actually spent by the hourly rates charged, and disbursements shall be determined by the expenses that have been paid or charged to your account, or that have been incurred on your behalf, but for which bills have not yet been rendered, as of the time we withdraw from the case or you discharge us. Any remaining retainer balance shall be returned to you.

E. **Charging Lien.** If we withdraw from representing you due to your non-payment of fees after we have instituted or appeared on your behalf in litigation, we have the right, in addition to any other remedy, to seek from the court a "charging lien" which entitles us to payment for services already rendered at the end of the case out of the proceeds of the amount

that you receive or are awarded by judgment or settlement. No such lien may attach to maintenance or child support payments.

IV. **Fee Disputes**

A. **Your Right to Arbitrate; Our Rights.** Should a dispute arise concerning our fees, you have the right, as set forth in the New York Court Rules (i.e., if the sums in dispute are less than \$50,000), at your election, to seek arbitration, which is binding upon both you and us. In the event of a dispute, we will supply you with a copy of the arbitration rules and a form for requesting arbitration. These rules may change from time to time.

B. **Right to Sue.** If you do not file a request for arbitration within thirty days after receiving our notice, we may commence an action against you to recover our fees. Alternatively, we may ask you to, and you may consent to our request to, submit the dispute to arbitration. We must obtain your consent in writing before we can initiate an arbitration. Our request, and your consent to arbitration, shall specify that you waive your right to otherwise pursue your claims and that you agree to be bound by the determination of the arbitration panel.

C. **No Charge For Discussion of Bills.** We will not charge you for any time spent in discussing your bills with you.

V. **Other Matters**

A. **Your Right to be Kept Informed About Your Case.** You have the right to be provided with copies of correspondence and legal documents relating to your case and to be kept apprised of the status of the case.

B. **Retention for Other Matters.** As a result of, or in connection with your matter, there may be additional matters and/or litigation that concern(s) you, and for which you will request our representation. Our fees and billing arrangement for such matters will be similar to those set forth in this letter, except for arbitration of fee disputes, since that is not mandatory in those other matters. We may request an additional retainer fee from you before we represent you in connection with those other matters.

C. **Trial-Preparation and Additional Retainer Fee.**

1. We may request advance retainers from time to time based on estimates of future work to be undertaken, and your payment of these additional advance retainers shall be a requirement of our continued representation. In such regard, if your matter has not been settled by the time trial preparation will be required, then you agree that before we begin preparing for trial:

a. You will pay in full all amounts you then owe to us and to third-party providers (such as expert witnesses whose trial testimony may be needed for

your matter, forensic accountants, appraisers and valuers, investigators, and court-reporting services, among others); and

b. We will discuss with you payment of an additional retainer fee in an amount to be determined, based on the complexity of the issues to be tried and the anticipated work in preparing for and representing you at trial, but which will be not less than Seventy-Five Thousand Dollars (\$75,000.00).

2. We will not be required to represent you at trial, unless you have paid us in full for all amounts you owe to us and to third-party providers as of the last day of the month before your trial is scheduled to begin.

D. Appeals and Additional Retainer Fees. If an appeal from an Order or Judgment in your matter becomes necessary, we will discuss entering into a further agreement for such representation and the payment of an additional retainer fee for such purpose.

E. Retention of Files. Please be advised that we will maintain your file in storage for six years following the entry of a divorce judgment or the date of the agreement in the absence of a divorce judgment. Although unusual, we have advised you that on occasion, items are lost or misplaced in storage and you hereby agree that we will not bear liability for any such occurrence. Please be further advised that it will be incumbent upon you to make arrangements and contact us to the extent that you want to take possession of your records upon the conclusion of said six year period and/or make other arrangements to preserve your file.

VI. Acknowledgments and Understanding

A. You acknowledge that you have read this Agreement in its entirety, have had full opportunity to consider its terms, have had full and satisfactory explanation of same, and fully understand and agree to such terms.

B. You acknowledge that there are no additional or different terms or agreements between us and our agreement is limited to that set forth in this Agreement.

C. You understand and acknowledge that any and all modifications to this Agreement, fee estimates, budgets for work to be done and disbursements to be incurred on your behalf, and adjustments to bills rendered to you will be valid only if in writing and signed by both you and us.

D. You acknowledge that you have been provided with and read the Statement of Client's Rights and Responsibilities, a copy of which is attached to this Retainer Agreement.

[CLIENT NAME]
November __, 2014
Page 6

VII. Accuracy of Information; Certifications. You agree to provide us with complete and accurate information concerning your matter, including your finances and all other issues which are the subject of submissions to the courts. We will be relying on your statements to us and 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.

VIII. No Guarantees. You acknowledge that (a) we have made no representations to you concerning the outcome and (b) we have not guaranteed and cannot guarantee the success of any action taken or decision made by us on your behalf during such litigation.

If the foregoing represents our understanding, please sign, date and return to us the enclosed copy of this letter, along with your check for the retainer fee, to indicate that these terms are agreeable to you and to authorize us formally to proceed on your behalf. I look forward to working with you.

COHEN CLAIR LANS GREIFER & THORPE LLP

By: _____
Bernard E. Clair

UNDERSTOOD, AGREED TO AND ACCEPTED BY:

[CLIENT NAME]

Schedule A

Calendar Year 2014

Bradley Bernstein (Partner)	\$
Bernard E. Clair (Partner)	\$
Robert Stephan Cohen (Partner)	\$
Joseph F. De Simone (Partner)	\$
Jad Greifer (Partner)	\$
S. Susan Gross (Partner)	\$
Deborah E. Lans (Partner)	\$
Howard Roy (Partner)	\$
Shannon Simpson (Partner)	\$
Mara T. Thorpe (Partner)	\$
Daniella Mayer (Senior Counsel)	\$
Michael Calogero (Associate)	\$
Nicholas F. Cohen (Associate)	\$
William P. Gross (Associate)	\$
Steven A. Leshnowar (Associate)	\$
Benjamin Lilien (Associate)	\$
Neena Tankha (Associate)	\$
Jean Hirner (Paralegal)	\$
Renee Labovitz (Paralegal)	\$
Gail R. Mendelson (Paralegal)	\$
Eileen Penta (Paralegal)	\$
Sherry Yasin (Paralegal)	\$

Calendar Year - 2015

Bradley Bernstein (Partner)	\$
Bernard E. Clair (Partner)	\$
Robert Stephan Cohen (Partner)	\$
Joseph F. De Simone (Partner)	\$
Jad Greifer (Partner)	\$
S. Susan Gross (Partner)	\$
Deborah E. Lans (Partner)	\$
Howard Roy (Partner)	\$
Shannon Simpson (Partner)	\$
Mara T. Thorpe (Partner)	\$
Daniella Mayer (Senior Counsel)	\$
Michael Calogero (Associate)	\$
Nicholas F. Cohen (Associate)	\$
William P. Gross (Associate)	\$
Steven A. Leshnowar (Associate)	\$
Benjamin Lilien (Associate)	\$
Neena Tankha (Associate)	\$
Jean Hirner (Paralegal)	\$
Renee Labovitz (Paralegal)	\$
Gail R. Mendelson (Paralegal)	\$
Eileen Penta (Paralegal)	\$
Sherry Yasin (Paralegal)	\$

STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES

Your 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 attorney, please read this document carefully.

If you ever have any questions about these rights, or about the way your case is being handled, do not hesitate to ask your attorney. He or she should be readily available to represent your best interests and 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 in the course of the relationship.

You are entitled to a written retainer agreement which must set forth, in plain language, the nature of the relationship and the details of the fee arrangement. 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.

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

Your 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 attorney may not request a retainer fee that is nonrefundable. That is, should you discharge your attorney, or should your attorney withdraw from the case, before the retainer is used up, he or she 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. However, your 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 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.

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 estimate shall be made in good faith but may be subject to change due to facts and circumstances affecting the case.

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, and to raise any objections or errors in a timely manner. Time spent in discussion or explanation of bills will not be charged to you.

You are expected to be truthful in all discussions with your attorney, and to provide all relevant information and documentation to enable him or her to competently prepare your case.

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.

You have the right to be present in court at the time that conferences are held.

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'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.

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 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, and may request that one or more interest-bearing bank accounts be used. You also are entitled to 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.

In the event of a fee dispute, you may have the right to seek arbitration. Your attorney will provide you with the necessary information regarding arbitration in the event of a fee dispute, or upon your request.

Receipt Acknowledged:

COHEN CLAIR LANS GREIFER & THORPE LLP

BY: _____

Bernard E. Clair

[CLIENT NAME]

Dated: November __, 2014

Dated: November __, 2014

LAW OFFICE OF
PETER M. NISSMAN

ATTORNEYS AT LAW
100 WALL STREET
23RD FLOOR
NEW YORK, NEW YORK 10005

TEL 212 • 750 • 1276

FAX 212 • 346 • 7719

EMAIL: nissman@nissmanlaw.com

LEGAL ASSISTANT
TOBY GRAGNANIELLO

OF COUNSEL
HEATHER WEINER HART
BEIGELMAN, FEINER & FELDMAN, PC

Date

RETAINER AGREEMENT

client
address
city, state zip code

Re: Doe v. Doe
Matrimonial Action

Dear _____:

This letter-agreement, prepared in accordance with our understanding of rules promulgated for matrimonial actions in New York State, confirms our understanding with respect to your retention of the Law Offices of Peter M. Nissman to represent you. Once you countersign it, it will constitute a legally binding contract. Please read this letter-agreement and the annexed Statement of Client's Rights and Responsibilities carefully.

The Nature of Our Representation: You have retained this firm to represent you in connection with a matrimonial action between you and your husband/wife _____. Although you agree we may take whatever steps we deem appropriate to protect your interests, we will keep you apprised of the status of your matter and will consult with you in advance concerning all major steps which need to be taken on your behalf. We shall provide you, should you wish it, with copies of correspondence and legal documents relating to your case.

Delegation of Responsibility: This firm consists of attorneys and support staff who work together to provide our clients with legal representation. I will be principally responsible for the administration of your matter, including the conduct of any substantive settlement negotiations. Other lawyers, however, may be assigned by me to work on aspects of your case, such as telephone calls, correspondence, memoranda, all of which, however, shall be carried out under my supervision.

Client's Name

Date

Page 2

Retainer Fee: You have agreed to pay us a retainer of \$ _____, which sum shall be credited against the time charges accrued on your behalf. This retainer payment does not necessarily represent the total fee you may incur by virtue of our services.

Billing Arrangements and Payment:

**A. Your Right to Receive Regular Statements;
Our Right to be Paid on a Current Basis; Interest**

You will generally be billed each month, but in no event less frequently than every two months. Unless there is an agreement to the contrary, bills must be paid within thirty (30) days after they are rendered. If any bill remains unpaid for more than thirty days, we reserve the right, to the extent permitted by law, to suspend work on your case and to seek to withdraw as your counsel. Interest at the rate of one (1%) percent per month will be added to any balance billed and unpaid for more than thirty (30) days.

**B. You Will Receive Detailed Bills
Which Should be Reviewed Promptly**

Included with each bill will be a summary explanation of the services rendered, by whom they were rendered, and a computation of the hourly time charges and disbursements incurred in connection with your matter. You are expected to review the bill upon its receipt and to promptly bring to our attention any objections you may have to the bill. While we strive to keep accurate records, we recognize the possibility of human error and we shall be glad to discuss with you, without charge any objections you raise to our bill. You should not feel that a candid discussion concerning fees or billing procedures would in any respect diminish our commitment to you. We ask only that you raise any objections promptly after receipt of the bill.

Hourly Billing Rates. The current hourly rates of the attorneys in our firm are as follows:

Peter M. Nissman	\$ _____
Associates	\$ _____
Paralegals/Legal Assistant	\$ _____

Client's Name

Date

Page 3

Modification of Billing Rates. We will not increase our rates relative to your matter through (month) of next year. Thereafter, there may be an increase, which will not exceed ten (10%) percent per year. You will receive at least thirty (30) days advance notice of any increase.

Applicable Services. The hourly rates apply to all time expended relative to your matter, including but not limited to: office meetings and conferences; telephone calls and conferences, either placed by you or to you or otherwise made on your behalf or related to your matter; preparation, review and revision of settlement agreements and other agreements and stipulations, correspondence, pleadings, motions, disclosure demands and responses, including statements of net worth and document review, affidavits and affirmations, or any other documents, memoranda or papers relative to your matter; legal research; court appearances; conferences; file review; preparation time; travel time; and any other time expended on behalf of or in connection with your matter.

Disbursements and Outside Charges. Disbursements include, but are not necessarily limited to, court filing fees, recording fees, charges of process servers, travel expenses, copying and facsimile charges, messenger services, necessary secretarial overtime, computer legal research, the fees of stenographers at court proceedings and examinations before trial, and, in appropriate circumstances, meals and commutation expenses. With respect to disbursements or outside charges in excess of \$50.00, you will be asked to pay or advance such costs directly.

Retention of Experts and Consultants. It may be necessary to retain outside experts such as appraisers, psychiatrists, actuaries, and accountants. I will select such experts subject to your approval. You will be responsible for the costs incurred for any such service and in some cases payment will be required in advance. Under appropriate circumstances, an application can be made to the court to have your spouse pay all or part of the aforementioned fees for experts although there can be no assurance such application will be granted.

Termination of Our Representation:

A. Termination by Client. You have the absolute right to terminate our services at any time. Should you exercise this right or if we are relieved as your attorneys by court order or you reconcile with your spouse and any action then pending is withdrawn, you will be charged for time expended by this firm and unpaid disbursements and any balance remaining of the retainer fee will be refunded to you, unless an action is pending in which we have appeared as your attorneys and, in such event, any amount due you will be promptly refunded to you upon the delivery to us of a duly executed consent to change attorneys for you in such action.

B. Termination by Attorneys. Subject to the terms of this retainer agreement, in the event any bill from this firm remains unpaid beyond a 30-day period or, if in the judgment of this firm there has been an irretrievable breakdown in the attorney-client relationship or a material breach of the terms of this retainer-agreement, the firm, at its option, may withdraw from its representation of you.

Client's Name

Date

Page 4

In the event an action is pending, and absent your consent, an application must be made to the court for such withdrawal. You agree that non-payment of fees or disbursements is proper cause for our withdrawal. In the event we decide to make application to the court to be relieved as your attorneys, you will be provided with notice of the application and an opportunity to be heard.

C. Charging Lien. Should any fees be due and owing to this firm upon the termination of our representation of you, in addition to any other remedy we shall have the right to seek a charging lien, *i.e.*, a lien upon the property 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.

D. Fee upon Termination. Should we withdraw from representing you or be discharged by you prior to depletion of the retainer fee, you will be charged only the fee expenses (time charges and disbursements) incurred during the period of our representation and the remainder of the retainer shall be refunded to you. If you terminate our services or you reconcile with your spouse and the time expended and disbursements incurred exceed payments by you to this firm, you shall promptly pay to us the amount due through the date of such advice to us.

Resolution of Fee Disputes: Although we seek to avoid fee disputes with a client and rarely have had such disputes, in the event of a fee dispute, you have the right to demand arbitration under the rules governing domestic relations matters. In such event, we shall advise you in writing by certified mail that you have thirty (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. If you elect arbitration, the decision of the arbitrators shall be binding upon both you and this firm. If you do not file a request for arbitration within thirty (30) days after receiving our notice, or if the matter is not subject to arbitration in accordance with the arbitration rules, we may commence an action against you to recover our fees. Although we may ask you to submit the dispute to binding arbitration, we must obtain your consent in writing before we can initiate arbitration.

Security Interests: You are under no obligation whatsoever to sign any documents for any security interest to your attorneys for the payment of fees, including a confession of judgment, a promissory note or a lien or mortgage on your home. Nonetheless, you understand that attorneys are entitled to be paid for the services rendered and, if you are unable to pay bills when rendered, you may wish to enter into an agreement with me whereby we defer payment of our fees upon the specific understanding that the fees will be satisfied at a later date from a specific source.

In the event you desire us to perform services for you upon the understanding that payment will be deferred, we may ask you to execute a confession of judgment or a mortgage for the unpaid balance of our fees, upon the understanding that notice of the security interest must be given to your spouse and the court must grant approval for such security interest.

Client's Name

Date

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Acknowledgments and Understanding:

- A. You acknowledge you have read this letter-agreement in its entirety, have had a full opportunity to consider its terms, and fully understand and agree to its terms.
- B. There are no additional or different terms or agreements other than those expressly set forth in this letter-agreement.
- C. You were provided with and read the Statement of Client's Rights and Responsibilities, an additional copy of which is attached.

Accuracy of Information. Certifications. Pursuant to court rule, we are required to sign every pleading, written motion, and other paper served on another party or filed or submitted to the court, which signature constitutes a certification that to the best of our knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of the paper or the contentions therein are not frivolous. The paper or contention would be frivolous if (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation or to harass or maliciously injure another; or (3) it asserts material factual statements that are false. We take our obligation under these rules seriously. 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.

Client Cooperation. You agree to cooperate in making available your files to assist in the performance of any services rendered, together with, if necessary, attending meetings, court appearances, etc.

Attorneys Advice. You will, at all times, be counseled as to the various legal alternatives available which can be instituted on your behalf. The prosecution or defense of a matrimonial action encompasses a number of considerations other than those which are strictly financial. Thus, financial cost as well as the emotional and psychological elements of each case dictate individual decisions with respect to the course of conduct taken. At all times I will advise you of the course of action which I believe satisfies the existing law and benefits your interest to the maximum extent.

Client's Name

Date

Page 6

No Guarantees. It is specifically acknowledged by you that this firm has made no representations or guarantees to you, express or implied, concerning the outcome of your matter or any aspect of it.

If this arrangement meets with your approval, kindly indicate your understanding and acceptance of the above by signing below where indicated and return same to me in the envelope enclosed for your convenience. Pursuant to court rule, a copy of this letter-agreement is required to be filed with the court in which your action is pending.

We are delighted that you have chosen our firm to represent you. We look forward to being of service to you.

Very truly yours,

Peter M. Nissman

**I HAVE READ AND UNDERSTAND THE ABOVE LETTER, HAVE
RECEIVED A COPY OF IT, AND ACCEPT ALL OF ITS TERMS.**

CLIENT'S NAME

VIA EMAIL ONLY

Mr. [REDACTED]
[REDACTED]

Dear Mr. [REDACTED]

This letter constitutes our retainer agreement relative to my representation of you in connection with any negotiations to settle your marital difficulties with your wife or, if necessary, to commence an action for divorce and for related relief in Supreme Court. [REDACTED] This agreement contains language that is required by law in matrimonial actions and when countersigned by you will be binding upon us both. Therefore, please take the time to read it, together with the enclosed Statement of Client's Rights and Responsibilities, carefully. Your signature on this letter will be evidence that you have read, understood and agreed to the terms of the retainer and your signature on the Statement will constitute your acknowledgment that you have received, read and signed the Statement of Client's Rights and Responsibilities.

1. This agreement does not apply to any appeals or post-judgment actions, proceedings, or applications and that, if such engagement were to be accepted by this firm in the future, the firm's representation would have to be evidenced by execution of another and separate Retainer Agreement. However, this retainer agreement in no way obligates me to accept any such engagement in the future.

2. You will be billed for attorney time at an hourly rate of [REDACTED]. Associate time will be billed at [REDACTED] per hour and paralegal time will be billed at [REDACTED] per hour. In addition to the foregoing, your responsibility will include direct payment or reimbursement 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, transcripts and customary fees of stenographers referable to examinations before trial in the event such examinations are utilized. In addition, you will be responsible for any expert fees, should an expert be needed.

Please note our new address is:

565 Fifth Avenue, 9th Floor
New York, NY 10017
(212) 888-6106

Mr. [REDACTED]
March 15, 2013
Page 2 of 4

3. You have agreed to pay a retainer fee of [REDACTED] to be applied against future billings. This retainer payment does not necessarily represent the amount of the overall fee which you may incur. The amount of the eventual fee will be based upon the hourly time charges, along with any out-of-pocket disbursements which are incurred in your behalf. You have further agreed to replenish the retainer fee in the sum of [REDACTED] as and when the retainer fee is expended.

4. You further understand that the hourly rates apply to all time expended relative to the client's matter, including but not limited to, office meetings and conferences, 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 your 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 your matter. A minimum of 2/10th's of an hour is applied to all telephone call time charges and a minimum of 3/10th of an hour is applied to each letter, irrespective of the actual time expended, unless the actual time expended exceeds the minimum, in which event you will be billed for the actual time. These minimum charges have been arrived at as a result of determining the time involved in retrieving the file and examining documents and letters in addition to the time required to consider the problem arising from or to be dealt with in the call or letter.

5. In the event that a negotiated settlement has not been arrived at, and executed, 30 days prior to the date upon which your action or proceeding is scheduled for trial or hearing a retainer in the amount of [REDACTED] will then be due and payable, the terms of which shall be identical to those herein above set forth as to the initial retainer.

6. 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 I strive to keep perfectly accurate time records, I recognize the possibility of human error and shall discuss with you any objections you raise to our bill. You will not be charged for time expended in discussing with me any aspect of the bill rendered to you.

7. You agree to pay such fees and to reimburse this firm for any advances made on your behalf not later than ten days from the date a bill is submitted to

Mr. [REDACTED]
March 15, 2013
Page 3 of 4

you for same. If an amount due to this firm is not paid within forty-five days of the billing statement, interest at a rate of nine (9%) percent 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.

8. You are advised that if, in my judgment, I decide that there has been an irretrievable breakdown in the attorney-client relationship, or a material breach of the terms of this retainer agreement, I may decide to make an application to the Court in which your action is pending to be relieved as your attorney. In such event, you will be provided with notice of the application and an opportunity to be heard. Should my application be granted, I shall make available to you, within thirty (30) days of our discharge by court order, or with your consent without court order, our file in connection with the matter.

9. In the event that any bill remains unpaid beyond a 90 day period, you agree that I may withdraw from representing you. 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, you acknowledge that in connection with any such withdrawal application, that the current delinquency shall be good cause for withdrawal.

10. While I seek to avoid any fee disputes with my clients, and rarely have such disputes, in the event such a dispute does arise, your signature on this agreement will constitute your consent, in advance, to submit any fee dispute to arbitration under Part 137 of the Rules of the Chief Administrator, Title XXII Of the Official Compilations of Codes, Rules and Regulations of the State of New York. A copy of Part 137 has been provided to you and you acknowledge by your signature herein, that you have read the official written instructions and procedure.

11. 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.

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

Mr. [REDACTED]
March 15, 2013
Page 4 of 4

13. You acknowledge that you have read this 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. You fully understand and acknowledge that there are no additional or different terms or agreements other than those expressly set forth in this written agreement and further acknowledge that you have been provided with and have read the Statement of Client's Rights and Responsibilities, an executed copy of which is attached to this Retainer Agreement.

If this retainer is satisfactory to you, please sign the original where indicated and return the letter to me at once together with a signed copy of the Statement of Client's Rights and Responsibilities, keeping the additional copies for your records. If you have any questions, give me a call.

Thank you for this fine opportunity to be of service.

Very truly yours,

Virginia A. LoPreto

READ, UNDERSTOOD AND AGREED:

[REDACTED]

May 12, 2011

Dear Mr. [REDACTED]

This letter constitutes our retainer agreement relative to my representation of you in connection with the commencement of post-judgment proceedings to enforce the judgment of divorce entered in the matter of [REDACTED] Index No. [REDACTED] as well as any negotiations and settlement of such enforcement issues. This agreement contains language that is required by law in matrimonial actions and when countersigned by you will be binding upon us both. Therefore, please take the time to read it, together with the enclosed Statement of Client's Rights and Responsibilities, carefully. Your signature on this letter will be evidence that you have read, understood and agreed to the terms of the retainer and your signature on the Statement will constitute your acknowledgment that you have received, read and signed the Statement of Client's Rights and Responsibilities.

1. This agreement does not apply to any appeals or other post-judgment actions, proceedings, or applications and that, if such engagement were to be accepted by this firm in the future, the firm's representation would have to be evidenced by execution of another and separate Retainer Agreement. However, this retainer agreement in no way obligates me to accept any such engagement in the future.

2. You will be billed for attorney time at an hourly rate of \$[REDACTED]. Paralegal time will be billed at [REDACTED] per hour. In addition to the foregoing, your responsibility will include direct payment or reimbursement 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, transcripts and customary fees of stenographers referable to examinations before trial in the event such examinations are utilized. In addition, you will be responsible for any expert fees, should an expert be needed.

3. You have agreed to pay a retainer fee of [REDACTED] to be applied against future billings. This retainer payment does not necessarily represent the amount of the overall fee which you may incur. The amount of the eventual fee will be based upon the hourly time charges, along with any out-of-pocket disbursements which are incurred in your behalf. You have further agreed to replenish the retainer fee in the sum of [REDACTED] as and when the retainer fee is expended.

4. You further understand that the hourly rates apply to all time expended relative to the client's matter, including but not limited to, office meetings and conferences, 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 your 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 your matter. A minimum of 2/10th's of an hour is applied to all telephone call time charges and a minimum of 3/10th of an hour is applied to each letter, irrespective of the actual time expended, unless the actual time expended exceeds

Mr. [REDACTED]
May 12, 2011
Page 2 of 4

the minimum, in which event you will be billed for the actual time. These minimum charges have been arrived at as a result of determining the time involved in retrieving the file and examining documents and letters in addition to the time required to consider the problem arising from or to be dealt with in the call or letter.

5. In the event that a negotiated settlement has not been arrived at, and executed, 30 days prior to the date upon which your post-judgment proceeding is scheduled for trial or hearing a retainer in the amount of [REDACTED] will then be due and payable, the terms of which shall be identical to those herein above set forth as to the initial retainer.

6. 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 I strive to keep perfectly accurate time records, I recognize the possibility of human error and shall discuss with you any objections you raise to our bill. You will not be charged for time expended in discussing with me any aspect of the bill rendered to you.

7. You agree to pay such fees and to reimburse this firm for any advances made on your behalf not later than ten days from the date a bill is submitted to you for same. If an amount due to this firm is not paid within forty-five days of the billing statement, interest at a rate of nine (9%) percent 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.

8. While I expect to be paid the fees due in a timely fashion, in situations where the client does not have funds readily available to pay additional fees as they accrue, I 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 or a promissory note or mortgage upon specified property. In either event, a lien will attach to your property. You are advised that any such security interest can be granted to me only with the permission of the justice assigned to your case upon an application on notice to the opposing party.

9. This firm may or may not negotiate for or make application to the court for a direction of counsel fees contribution from your spouse, as this firm, in its sole discretion, may deem appropriate. You understand that there is no assurance that your spouse will agree to make any contribution toward your legal expenses, or that any contribution will be directed by a court. You further understand that even if your spouse agrees to make a contribution or even if a court directs such a contribution, there is no assurance that any such contribution will actually be paid by your spouse or collected by this firm. In the event that your spouse makes a contribution toward your legal expenses, whether by agreement or as a result of a judicial direction such contribution will be credited to your account when and if actually paid to the firm by your spouse. If the amount of any such contribution collected exceeds the amount owing to this firm, any excess payment will be refunded to you. Conversely, you understand that any such agreement or direction in no way relieves you of the obligations undertaken by you upon signing this agreement and that you remain liable for any balance due after crediting any amount actually collected from

Mr. [REDACTED]
May 12, 2011
Page 3 of 4

your spouse. Such collection services shall be considered a post-judgment enforcement matter which is not covered by the Retainer Agreement.

10. You are advised that if, in my judgment, I decide that there has been an irretrievable breakdown in the attorney-client relationship, or a material breach of the terms of this retainer agreement, I may decide to make an application to the Court in which your action is pending to be relieved as your attorney. In such event, you will be provided with notice of the application and an opportunity to be heard. Should my application be granted, I shall make available to you, within thirty (30) days of our discharge by court order, or with your consent without court order, our file in connection with the matter.

11. In the event that any bill remains unpaid beyond a 90 day period, you agree that I may withdraw from representing you. 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, you acknowledge that in connection with any such withdrawal application, that the current delinquency shall be good cause for withdrawal.

12. While I seek to avoid any fee disputes with my 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, I 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 I shall enclose a copy of the arbitration rules and a form for requesting arbitration. The decision resulting from arbitration is binding upon both of us.

13. 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.

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

15. You acknowledge that you have read this agreement in its entirety, have had full opportunity to consider its terms, and have had full and satisfactory explanation of same, and fully understand its terms and agree to such terms. You fully understand and acknowledge that there are no additional or different terms or agreements other than those expressly set forth in this written agreement and further acknowledge that you have been provided with and have read the Statement of Client's Rights and Responsibilities, an executed copy of which is attached to this Retainer Agreement.

Mr. [REDACTED]

May 12, 2011

Page 4 of 4

If this retainer is satisfactory to you, please sign the original where indicated and return the letter to me at once together with a signed copy of the Statement of Client's Rights and Responsibilities, keeping the additional copies for your records. Thank you for this fine opportunity to be of service.

Very truly yours,

Virginia A. LoPreto

READ, UNDERSTOOD AND AGREED TO:

[REDACTED]

[REDACTED]

June 17, 2014

[REDACTED]
[REDACTED]
[REDACTED]

Dear Ms. [REDACTED]

This letter constitutes our retainer agreement relative to my representation of you in connection with the following three proceedings: In your divorce proceeding in Supreme Court, New York County under Docket Number [REDACTED]; In your Custody and Visitation Proceeding in Family Court, New York County under File Number [REDACTED] and Docket Numbers [REDACTED]; And in your Article 10 Proceeding in Family Court, New York County under File Number [REDACTED] and Docket Number [REDACTED]. This agreement contains language that is required by law in matrimonial actions and when countersigned by you will be binding upon us both. Therefore, please take the time to read it, together with the enclosed Statement of Client's Rights and Responsibilities, carefully. Your signature on this letter will be evidence that you have read, understood and agreed to the terms of the retainer and your signature on the Statement will constitute your acknowledgment that you have received, read and signed the Statement of Client's Rights and Responsibilities.

1. This agreement does not apply to any appeals or post-judgment actions, proceedings, or applications and that, if such engagement were to be accepted by this firm in the future, the firm's representation would have to be evidenced by execution of another and separate Retainer Agreement. However, this retainer agreement in no way obligates me to accept any such engagement in the future.

2. You will be billed for attorney time at an hourly rate of [REDACTED]. Associate time will be billed at [REDACTED] per hour and paralegal time will be billed at [REDACTED] per hour. In addition to the foregoing, your responsibility will include direct payment or reimbursement 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, transcripts and customary fees of stenographers referable to examinations before trial in the event such examinations are utilized. In addition, you will be responsible for any expert fees, should an expert be needed.

3. You have agreed to pay a retainer fee of [REDACTED] to be applied against future billings. This retainer payment does not necessarily represent the amount of the overall fee which you may incur. The amount of the eventual fee will be based upon

Ms. [REDACTED]
June 17, 2014
Page 2 of 4

the hourly time charges, along with any out-of-pocket disbursements which are incurred in your behalf. You have further agreed to replenish the retainer fee in the sum of [REDACTED] as and when the retainer fee is expended.

4. You further understand that the hourly rates apply to all time expended relative to the client's matter, including but not limited to, office meetings and conferences, 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 your 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 your matter. A minimum of 2/10th's of an hour is applied to all telephone call time charges and a minimum of 3/10th of an hour is applied to each letter, irrespective of the actual time expended, unless the actual time expended exceeds the minimum, in which event you will be billed for the actual time. These minimum charges have been arrived at as a result of determining the time involved in retrieving the file and examining documents and letters in addition to the time required to consider the problem arising from or to be dealt with in the call or letter.

5. In the event that a negotiated settlement has not been arrived at, and executed, 30 days prior to the date upon which your action or proceeding is scheduled for trial or hearing a retainer in the amount of [REDACTED] will then be due and payable, the terms of which shall be identical to those herein above set forth as to the initial retainer.

6. 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 I strive to keep perfectly accurate time records, I recognize the possibility of human error and shall discuss with you any objections you raise to our bill. You will not be charged for time expended in discussing with me any aspect of the bill rendered to you.

7. You agree to pay such fees and to reimburse this firm for any advances made on your behalf not later than ten days from the date a bill is submitted to you for same. If an amount due to this firm is not paid within forty-five days of the billing statement, interest at a rate of nine (9%) percent 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.

8. You are advised that if, in my judgment, I decide that there has been an irretrievable breakdown in the attorney-client relationship, or a material breach of the terms of this retainer agreement, I may decide to make an application to the Court in which your action is pending to be relieved as your attorney. In such event, you will be provided with notice of the application and an opportunity to be heard. Should my application be granted, I shall make available to you, within thirty (30) days of our discharge by court order, or with your consent without court order, our file in connection with the matter.

9. In the event that any bill remains unpaid beyond a 90 day period, you agree that I may withdraw from representing you. 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, you acknowledge that in connection with any such withdrawal application, that the current delinquency shall be good cause for withdrawal.

10. While I seek to avoid any fee disputes with my clients, and rarely have such disputes, in the event such a dispute does arise, your signature on this agreement will constitute your consent, in advance, to submit any fee dispute to arbitration under Part 137 of the Rules of the Chief Administrator, Title XXII Of the Official Compilations of Codes, Rules and Regulations of the State of New York. A copy of Part 137 has been provided to you and you acknowledge by your signature herein, that you have read the official written instructions and procedure.

11. 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.

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

13. You acknowledge that you have read this 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. You fully

Ms. [REDACTED]
June 17, 2014
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understand and acknowledge that there are no additional or different terms or agreements other than those expressly set forth in this written agreement and further acknowledge that you have been provided with and have read the Statement of Client's Rights and Responsibilities, an executed copy of which is attached to this Retainer Agreement.

If this retainer is satisfactory to you, please sign the original where indicated and return the letter to me at once together with a signed copy of the Statement of Client's Rights and Responsibilities, keeping the additional copies for your records. If you have any questions, give me a call.

Thank you for this fine opportunity to be of service.

Very truly yours,

Virginia A. LoPreto

READ, UNDERSTOOD AND AGREED:

July 10, 2014

[REDACTED]
[REDACTED]
[REDACTED]

Dear Ms. [REDACTED]

This letter constitutes our retainer agreement relative to my representation of you in connection with any negotiations to settle your marital difficulties with your husband or, if necessary, to commence an action for divorce and for related relief in Supreme Court, Westchester County. This agreement contains language that is required by law in matrimonial actions and when countersigned by you will be binding upon us both. Therefore, please take the time to read it, together with the enclosed Statement of Client's Rights and Responsibilities, carefully. Your signature on this letter will be evidence that you have read, understood and agreed to the terms of the retainer and your signature on the Statement will constitute your acknowledgment that you have received, read and signed the Statement of Client's Rights and Responsibilities.

1. This agreement does not apply to any appeals or post-judgment actions, proceedings, or applications and that, if such engagement were to be accepted by this firm in the future, the firm's representation would have to be evidenced by execution of another and separate Retainer Agreement. However, this retainer agreement in no way obligates me to accept any such engagement in the future.

2. You will be billed for attorney time at an hourly rate of [REDACTED]. Associate time will be billed at [REDACTED] per hour and paralegal time will be billed at [REDACTED] per hour. In addition to the foregoing, your responsibility will include direct payment or reimbursement 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, transcripts and customary fees of stenographers referable to examinations before trial in the event such examinations are utilized. In addition, you will be responsible for any expert fees, should an expert be needed.

3. You have agreed to pay a retainer fee in an amount to be determined, to be applied against future billings. This retainer payment does not necessarily represent the amount of the overall fee which you may incur. The amount of the eventual fee will be based upon the hourly time charges, along with any out-of-pocket disbursements which are incurred in your behalf.

Ms. [REDACTED]
July 10, 2014
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4. You further understand that the hourly rates apply to all time expended relative to the client's matter, including but not limited to, office meetings and conferences, 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 your 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 your matter. A minimum of 2/10th's of an hour is applied to all telephone call time charges and a minimum of 3/10th of an hour is applied to each letter, irrespective of the actual time expended, unless the actual time expended exceeds the minimum, in which event you will be billed for the actual time. These minimum charges have been arrived at as a result of determining the time involved in retrieving the file and examining documents and letters in addition to the time required to consider the problem arising from or to be dealt with in the call or letter.

5. In the event that a negotiated settlement has not been arrived at, and executed, 30 days prior to the date upon which your action or proceeding is scheduled for trial or hearing a retainer in the amount of [REDACTED] will then be due and payable, the terms of which shall be identical to those herein above set forth as to the initial retainer.

6. 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 I strive to keep perfectly accurate time records, I recognize the possibility of human error and shall discuss with you any objections you raise to our bill. You will not be charged for time expended in discussing with me any aspect of the bill rendered to you.

7. You agree to pay such fees and to reimburse this firm for any advances made on your behalf not later than ten days from the date a bill is submitted to you for same. If an amount due to this firm is not paid within forty-five days of the billing statement, interest at a rate of nine (9%) percent 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.

8. You are advised that if, in my judgment, I decide that there has been an irretrievable breakdown in the attorney-client relationship, or a material breach of the terms of this retainer agreement, I may decide to make an application to the Court in

Ms. [REDACTED]
July 10, 2014
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which your action is pending to be relieved as your attorney. In such event, you will be provided with notice of the application and an opportunity to be heard. Should my application be granted, I shall make available to you, within thirty (30) days of our discharge by court order, or with your consent without court order, our file in connection with the matter.

9. This firm may or may not negotiate for or make application to the court for a direction of counsel fees contribution from your spouse, as this firm, in its sole discretion, may deem appropriate. You understand that there is no assurance that your spouse will agree to make any contribution toward your legal expenses, or that any contribution will be directed by a court. You further understand that even if your spouse agrees to make a contribution or even if a court directs such a contribution, there is no assurance that any such contribution will actually be paid by your spouse or collected by this firm. In the event that your spouse makes a contribution toward your legal expenses, whether by agreement or as a result of a judicial direction such contribution will be credited to your account when and if actually paid to the firm by your spouse. If the amount of any such contribution collected exceeds the amount owing to this firm, any excess payment will be refunded to you. Conversely, you understand that any such agreement or direction in no way relieves you of the obligations undertaken by you upon signing this agreement and that you remain liable for any balance due after crediting any amount actually collected from your spouse. Such collection services shall be considered a post-judgment enforcement matter which is not covered by the Retainer Agreement.

10. In the event that any bill remains unpaid beyond a 90 day period, you agree that I may withdraw from representing you. 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, you acknowledge that in connection with any such withdrawal application, that the current delinquency shall be good cause for withdrawal.

11. While I seek to avoid any fee disputes with my clients, and rarely have such disputes, in the event such a dispute does arise, your signature on this agreement will constitute your consent, in advance, to submit any fee dispute to arbitration under Part 137 of the Rules of the Chief Administrator, Title XXII Of the Official Compilations of Codes, Rules and Regulations of the State of New York. A copy of Part 137 has been provided to you and you acknowledge by your signature herein, that you have read the official written instructions and procedure.

12. 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

Ms. [REDACTED]
July 10, 2014
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refunded to you.

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

14. You acknowledge that you have read this 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. You fully understand and acknowledge that there are no additional or different terms or agreements other than those expressly set forth in this written agreement and further acknowledge that you have been provided with and have read the Statement of Client's Rights and Responsibilities, an executed copy of which is attached to this Retainer Agreement.

If this retainer is satisfactory to you, please sign the original where indicated and return the letter to me at once together with a signed copy of the Statement of Client's Rights and Responsibilities, keeping the additional copies for your records. If you have any questions, give me a call.

Thank you for this fine opportunity to be of service.

Very truly yours,

Virginia A. LoPreto.

READ, UNDERSTOOD AND AGREED:

[REDACTED]

Date

PERSONAL AND CONFIDENTIAL

Client Information

XXXXXXXXXXXXX

XXXXXXXXXXXXX

RETAINER AGREEMENT

Dear Client's Name :

Please read this Retainer Agreement, and do not sign this agreement unless you understand and agree to all of the terms. If you have any questions about this agreement, please let us know.

A. **The Nature of Our Representation**: This agreement confirms that you have retained Preston Stutman & Partners, P.C. (the "firm" or "law firm") as your attorneys to represent you in negotiating an agreement with your spouse for a dissolution of your marriage and related issues or, if that is not possible, to represent you in matrimonial litigation.

B. **Retainer/Minimum Fee**: You have agreed to pay us an initial retainer fee of \$. The retainer paid by you shall be applied by us against our time charges and disbursements computed on the basis set forth in this retainer. Under the circumstances of this case, as you know, it is possible that the retainer payment will not represent the total fee. The eventual fee will be based upon our billing plus any out-of-pocket disbursements made on your behalf. Once that retainer is exhausted, we shall submit bills to you at least every 60 days. If your initial retainer balance is exhausted, you will be required to provide incremental, additional retainer deposits depending on the circumstances, unless we agree to waive this requirement. In the event we

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withdraw from representing you or you discharge us prior to the exhaustion of that retainer, your obligation to us shall be computed on the basis set forth below, and we shall refund to you any unexpended balance. The retainer and all funds paid to our firm shall be placed in our general business account. This Agreement is deemed effective as of DATE

In the event we obtain a disposition of your matrimonial matter, either by way of a settlement agreement (termed separation agreement or stipulation of settlement) or by court order or judgment, the aforementioned retainer fee shall also be the minimum fee charged to you, i.e., there will be no refund of the retainer fee. *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.*

B-1. Replenishment: Hours expended on your matter will be charged against the retainer and, in the event the retainer fee is depleted or comes within \$1_____ of depletion as a result of hours charged, the client agrees to replenish his or her account by payment of an interim retainer in the amount of _____. Likewise, as each such interim replenishment amount may be absorbed by time charges, additional interim replenishments, in like amount (or in the sum of \$_____), shall be immediately made to the client's account. Replenishment amounts paid after the initial minimum fee has been absorbed are not treated as additional minimum fees. In other words, if the initial minimum fee is consumed and you then pay a replenishment amount, if your matter is then concluded with the absorption of only XX% of the replenishment amount, XX% of the replenishment will be refunded to you upon the closing of your file.

In the event that a negotiated settlement has not been arrived at, and executed, 30 days prior to the date upon which your action or proceeding is scheduled for trial or hearing, and should your initial retainer have been then utilized in full, an additional retainer in a sum determined by the undersigned will be then due and payable, the terms in respect of which shall be identical to those hereinabove set forth as to the initial retainer.

C. Delegation of Responsibility: 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 this matter.

The client understands that he or she is retaining the Law Firm, an organization consisting of a number of attorneys, law clerks, paralegals, and support staff, all of whom function as an integrated team for the purpose of providing the most effective legal representation.

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.

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 appearances, trial work, and any other matter deemed by the Law Firm to be appropriately delegated.

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 firm.

This team approach gives the client the benefit of the collective experience and strategic judgment of all attorneys and other professionals in the Law Firm, and also allows the case to move forward on a more efficient and cost-effective basis, due to the variable hourly rates set forth herein, than would be possible in the absence of such delegation.

It is further specifically understood and agreed that the undersigned partner will be in charge of, and responsible for, the administration of your matter, but it may well be assigned to an associate of this firm for day-to-day services, including, but not limited to, telephone calls and various paperwork. All of the same, however, shall be reviewed by the partner in charge.

The client agrees to fully cooperate with any attorney, paralegal, clerk, or other member of the staff of the firm in the administration of the case. In the event that the client fails or refuses to cooperate with the Law Firm to such a degree as to prevent the firm from rendering effective representation, the Firm may take such steps as are necessary to withdraw its representation in accordance with applicable law.

D. **Billing Arrangements and Payment:**

(1) **Your Right to Receive Regular Statements and Our Right to be Paid on a Current Basis:** You will generally be billed and receive a statement of account each month, but in no event less than every 60 days. Bills must be paid within 30 days. If not, we reserve the right, to the extent permitted by law, to suspend work and seek to withdraw from your case. We will charge interest at a rate not to exceed XX% per year for any unpaid balances commencing 30 days from the date of the bill.

(2) **Bills Must Be Reviewed Promptly:** Each bill will show the general work performed, the hourly time charges, and disbursements. You are expected to review the bill and promptly bring to our attention any questions or objections. We strive to keep accurate records, but recognize the possibility of making errors. We shall be glad to discuss, without charge, any objections you may have. We assure you that a frank discussion concerning our fees or billing procedures will not in any way affect our representation of you. All bills will be presumed

correct if we do not receive any objection to them, in writing, within thirty days of receipt.

E. **Hourly Billing Rates and Responsibility for Your Matter:** All work of the Firm on your matter will be under my direct supervision and control, and I will be the principal attorney handling your case. **The hourly rate you will be charged for my time is**

Presently, the firm's hourly billing rates are:

Partners, Senior Counsel and Special Counsel at \$XXX to \$XXX;
Associate Attorneys at \$XXX-\$XXX; and
Paralegals/Law Clerks at \$XXX to \$XXX and Clerks at \$XXX

Two attorneys shall not bill at the same time for the same work performed. Any changes in rates shall be incorporated into a written agreement amending this agreement, which will have to be signed by you before it may take effect. In the event you do not consent to the increased rate, the Firm will have the right to withdraw as your counsel.

F. **Modification of Billing Rates:** We will not increase our rates relative to your matter through the end of the calendar year. Thereafter, in each new calendar year, there may be an increase, which will not exceed XX% percent. You will receive at least 30 days' advance notice of any increase. If you do not wish to pay the increased rates, you have the right to terminate our services, be responsible only for services rendered at the rates above, or as otherwise agreed. If you do not wish to pay the increased rate and do not elect to terminate, we shall have the right to terminate and withdraw, and you waive any right to object thereto.

G. **Applicable Services:** The hourly billing rates set forth above apply to all time expended relative to your matter, including without limitation: office meetings, conferences, telephone calls, drafting, reviewing papers and other documents, legal research, file review, preparation time, travel time, and any other time expended in connection with your matter. Each email, letter and telephone conversation will be billed at a minimum of six 6 minutes. This amount has been arrived at as a result of calculating the time involved in retrieving the file, and examining the documents or letters required to dictate the letter or respond to the call, in addition to the time required to consider the problem arising from or to be dealt with in the call or letter.

H. **Disbursements and Outside Charges:** The provisions in this agreement do not cover or include: (a) any actions or proceedings other than the one described herein; (b) work in appellate courts; or (c) real estate transactions. In addition to the fees due under this agreement you are responsible to pay for and/or reimburse us for out-of-pocket expenses related to your case. Out-of-pocket expenses include, without limitation, stenographer's charges for court minutes or depositions, cost of serving and filing papers, court fees, process servers, outside copying costs, court calendar service, subpoena fees, long distance telephone calls, computer research, travel and parking charges, normally made by me or requested by you. Disbursements are in addition to fees based upon time and are to be paid by you promptly when

billed. Should disbursements or outside charges be in excess of \$150, you may be asked to pay or advance such charges directly. Additionally, you will be billed a flat X% of your monthly invoice which shall cover regular telephone, postage, facsimile and photocopying expenses undertaken in our office and you will NOT be billed separately for these particular items.

I. **Retention of Experts and Consultants:** It may be necessary to retain outside experts such as appraisers, actuaries and accountants. Such experts will be selected by me subject to your prior approval. You will be responsible for the costs incurred for any such services we retain (and as the Court directs as to others) and in some cases payment may be required in advance.

J. **Termination of Our Representation:**

(1) **Termination by Client:** You have the absolute right to terminate our services at any time.

(2) **Termination by Attorneys:** In the event that any bill remains unpaid beyond a 30-day period, or, if in the judgment of this firm there has been an irretrievable breakdown in the attorney-client relationship or a material breach of the terms of this retainer-agreement, the firm, at its option, may withdraw from its representation of you. In the event that an action is pending, and absent your consent, an application must be made to the Court for such withdrawal. You agree that non-payment of fees or disbursements is proper cause for our withdrawal. In the event we decide to make application to the Court to be relieved as your attorneys, you will be provided with notice of the application and an opportunity to be heard.

(3) **Charging Lien:** Should any fees be due and owing at termination of representation, in addition to any other remedy I shall have the right to seek a charging lien, i.e., a lien upon the property awarded to you as the result of equitable distribution. No such lien may attach to maintenance or child support payments in any case.

K. **Arbitration:** While we seek to avoid any fee disputes with you, in the event such a fee dispute does arise, as to our fee for legal services, regardless of the amount in dispute, you and we agree that we will resolve the fee dispute by arbitration conducted pursuant to Part 137 of the Rules of Chief Administrator of the Courts (22 NYCRR), except that we and you agree to be bound by the decision of the arbitrator(s) and we and you agree to waive our rights to commence an action on the merits (a trial *de novo*) to reject the award of the arbitrator(s) in a court of law within 30 days after the decision of the arbitrator(s) has been mailed.

In signing this agreement, you acknowledge that you have reviewed the online information for the locality in which your matter is pending found at http://www.nycourts.gov/admin/feedispute/local_programs.shtml. You further acknowledge that you understand that you are not required to agree to arbitration, nor, having agreed to arbitration, to agree to waive your right to seek a trial *de novo* under Part 137, but have nonetheless agreed to

do so.

L. **Acknowledgments and Understanding:** You acknowledge that you have read this letter-agreement in its entirety, have had a full opportunity to consider its terms, and fully understand and agree to its terms. There are no additional or different terms other than those expressly set forth in this letter-agreement. You acknowledge you have been provided with and requested to read and sign the Statement of Client's Rights and Responsibilities required under Court rule.

M. **Accuracy of Information, Certifications:** Pursuant to Court rule, this firm is required to sign all papers submitted on your behalf and to certify court papers submitted by you which contain statements of facts. The certification is that after appropriate inquiry I have no knowledge that the substance of the submission is false. Accordingly, you agree to provide us with complete and accurate information which will form the basis of Court papers and, if I request it, 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 I prepare on your behalf and which you shall review and sign.

N. **Appeals:** This agreement and our representation does not extend to any appeals (defense or prosecution, interim or post judgment), and any such matters shall be reserved for future agreement between us. If we continue to represent you on any appeal without having any further written agreement, it shall be deemed that the terms of this agreement shall apply to the appeal.

O. **Pension/Retirement Issues/Tax Advice:** It may be necessary at the end of your case to have a Qualified Domestic Relations Order with respect to division of pension or retirement funds. It is understood and agreed that for such work I will refer you to a specialists who prepare these documents. Additionally, except for certain general matters involving your case, our firm does not render tax advice and you should consult with your tax adviser for detailed advice about tax matters.

P. **No Guarantees/Risks:** We have discussed with you in detail the difficulties of negotiation, as well as the hazards of litigation, and you are aware that despite all our efforts on your behalf, there can be no assurance or guaranty of the outcome in this matter. It is specifically acknowledged by you that this firm has made no representations or guarantees to you, express or implied, concerning the outcome of your matter or any aspect of it.

Q. **Possible Contribution By Client's Spouse:** 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.

During the course of negotiations, this firm may seek, on your behalf, depending upon the circumstances of your matter, recovery from your spouse of the fees and disbursements expended by you. Similarly, and in the event the matter is litigated, the appropriate applications will be made, in the appropriate forums, for such relief. There are, however, certain actions and proceedings in which counsel fees cannot be awarded by the Court. In the event this firm notwithstanding such circumstances shall be successful, in whole or in part, in the recovery of such monies, this firm shall refund to you the extent of such recovery. This firm makes no representation as the viability of your claim against your spouse in this regard.

In the event that the client's spouse makes a contribution toward the client's legal expenses, whether by agreement or as a result of judicial direction, such contribution shall be credited to the client's account when and if actually paid to the firm by the client's spouse. If any such contribution is collected by the firm and the amount collected exceeds the amount owing to the firm, any excess payment will be refunded to the client.

Conversely, the client understands that any such agreement or direction in no way relieves the client of the obligations undertaken by the client upon execution of this agreement, and the client remains liable to the Law Firm for any balance due after crediting any amount actually collected from the client's spouse.

The client understands that there is no assurance that his or her spouse will agree to make any contribution toward the client's legal expenses, or that any contribution will be directed by a court. The client further understands that even if his or her spouse agrees to make such a contribution or even if a court directs such a contribution, there is no assurance that any such contribution will actually be paid by the client's spouse or collected by the Law Firm.

The client understands that the Law Firm may or may not make application for a direction of counsel fee contribution from the client's spouse, as the Law Firm, in its sole discretion, may be appropriate.

The client further understands that the Law Firm is not required to take any steps to collect any counsel fee award which may be directed by a court or which may be agreed to by the client's spouse. Such collection service shall be considered a post-judgment enforcement matter that is not covered by this Retainer Agreement.

R. **Security Payments**: Notwithstanding the foregoing, if you do not pay any bill within 20 days of your receipt of it, we may apply to an appropriate court for leave to accept from you a promissory note in the amount of that bill or some other security interest. Such promissory note will be payable on demand (but not before the earliest of two years from this agreement, your termination of our retention as your counsel, or the date on which you receive your share of the marital assets) and will bear interest at the rate of X% per annum.

If this arrangement meets with your approval, kindly indicate your understanding and acceptance by signing below where indicated and returning this agreement to me along with your retainer check.

We are mindful that in choosing our firm to represent you, you are entrusting us with issues that will have a significant impact on your life. We recognize and accept this substantial responsibility and look forward to working with you to achieve the best possible outcome under the circumstances.

Sincerely,

Dana M. Stutman

I HAVE READ AND UNDERSTAND THE
ABOVE RETAINER AGREEMENT
AND ACCEPT ALL OF ITS TERMS:

Client's Name

3 A.D.3d 322, 769 N.Y.S.2d 883, 2004 N.Y. Slip Op. 00021
(Cite as: 3 A.D.3d 322, 769 N.Y.S.2d 883)

H

Supreme Court, Appellate Division, First
Department, New York.

Ira E. GARR, P.C., Plaintiff-Respondent,

v.

Sara KINBERG, Defendant-Appellant.

Jan. 6, 2004.

Ira E. Garr, Pro Se.

Sara Kinberg, Pro Se.

maining contentions and find them unavailing.

MAZZARELLI, J.P., ANDRIAS, SAXE,
WILLIAMS, FRIEDMAN, JJ., concur.

N.Y.A.D. 1 Dept. 2004.

Garr v. Kinberg

3 A.D.3d 322, 769 N.Y.S.2d 883, 2004

N.Y. Slip Op. 00021

END OF DOCUMENT

Judgment, Supreme Court, New York
County (Paula Omansky, J.), entered
November*884 8, 2002, upon a jury ver-
dict in favor of plaintiff, in the principal
amount of \$28,639.35, unanimously af-
firmed, with costs.

In this action to recover legal fees, the
jury was entitled to credit plaintiff attor-
ney's testimony concerning his compliance
with 22 NYCRR § 136.5(a) and, based
upon that testimony, to conclude that de-
fendant client had been afforded the requi-
site notice of her right to arbitrate the fee
dispute. Nor, under the circumstances
presented, in which plaintiff substantially
complied with 22 NYCRR § 1400.2 and §
1400.3, rendered substantial services and
achieved a reasonably favorable result, is
plaintiff's recovery of legal fees precluded
by his late filing of the parties' retainer
agreement (*see Flanagan v. Flanagan*, 267
A.D.2d 80, 699 N.Y.S.2d 406). Finally, the
trial evidence, fairly considered (*see*
Nicastro v. Park, 113 A.D.2d 129, 136,
495 N.Y.S.2d 184), amply supported the
jury verdict awarding plaintiff the full
amount of legal fees requested.

We have considered defendant's re-

11 A.D.3d 211, 783 N.Y.S.2d 328, 2004 N.Y. Slip Op. 07103
(Cite as: 11 A.D.3d 211, 783 N.Y.S.2d 328)

H

Supreme Court, Appellate Division, First
Department, New York.

Elizabeth Ann AGOSTINI-KNOPS,
Plaintiff-Appellant,

v.

Robert KNOPS, Defendant.

Jordan Glass, Nonparty Respondent.

Oct. 5, 2004.

Background: In divorce action, former wife appealed from the denial, by the Supreme Court, New York County, Judith J. Gische, J., of her motion for reimbursement, by former husband, of fee paid to wife's former attorney by former husband, and for sanctions against that attorney.

Holding: The Supreme Court, Appellate Division, held that attorney was not required to disgorge fee.

Affirmed.

West Headnotes

Attorney and Client 45 ↪153

45 Attorney and Client

45IV Compensation

45k153 k. Deductions and forfeitures. Most Cited Cases

Attorney who, after being retained by wife, mediated a separation agreement which included a stipulation that attorney's fee of \$21,000 would be paid by husband, was not required to disgorge that fee to wife, even though attorney failed to provide wife with required statement of client's rights or a written retainer agreement; fee had been paid by husband, who was not seeking its return. N.Y.Ct.Rules, § 1400.1 et seq.

****329** Lansner & Kubitschek, New York (Barbara J. Schaffer of counsel), for appellant.

Benjamin, Brotman & Associates, P.C., New York (Howard Benjamin of counsel), for respondent.

BUCKLEY, P.J., MAZZARELLI, SAXE,
ELLERIN, GONZALEZ, JJ.

***211** Order, Supreme Court, New York County (Judith J. Gische, J.), entered April 2, 2003, which, in an action for divorce, insofar as appealed from as limited by the briefs, denied plaintiff's motion for reimbursement of the fee paid to her former attorney, nonparty respondent on this appeal, by her former husband, defendant in this action, and for sanctions against respondent, unanimously affirmed, with costs.

It appears that respondent, who was engaged by plaintiff, mediated a separation agreement between the parties, which stipulated that a legal fee of \$21,000 owed by plaintiff to respondent was to be paid by defendant. Plaintiff now seeks to have respondent disgorge that fee on the ground that it was excessive and that he failed to provide her with a Statement of Client's Rights and Responsibilities or a written retainer agreement, in violation of 22 NYCRR part 1400. The motion court, while finding that respondent did not substantially comply with part 1400, properly refused to direct respondent's disgorgement of the fee since it was paid by defendant, not plaintiff, and defendant was not seeking its return. We reject plaintiff's argument that the fee was paid from marital assets, and that she would therefore have received more money under the separation

11 A.D.3d 211, 783 N.Y.S.2d 328, 2004 N.Y. Slip Op. 07103
(Cite as: 11 A.D.3d 211, 783 N.Y.S.2d 328)

agreement had the fee not been part of the bargained-for exchange, where the separation agreement provided that the parties were each retaining 100% of their respective bank accounts and investment accounts and that any joint accounts *212 had already been divided between them. Nor does plaintiff allege frivolous conduct warranting imposition of sanctions pursuant to 22 NYCRR part 130.

We have considered plaintiff's other claims and find them unavailing.

N.Y.A.D. 1 Dept.,2004.
Agostini-Knops v. Knops
11 A.D.3d 211, 783 N.Y.S.2d 328, 2004
N.Y. Slip Op. 07103

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72 A.D.3d 182, 894 N.Y.S.2d 398, 2010 N.Y. Slip Op. 00788
(Cite as: 72 A.D.3d 182, 894 N.Y.S.2d 398)

H

Supreme Court, Appellate Division, First
Department, New York.
Peter F. EDELMAN, Plaintiff-Appellant,
v.
Claudia POSTER, Defendant-Respondent.

Feb. 4, 2010.

Background: Attorney brought action against client to recover, under theories of breach of contract and of account stated, the sum of \$155,934.05, plus interest, representing fees allegedly due for services rendered under retainer agreements in a matrimonial action. The Supreme Court, New York County, Emily Jane Goodman, J., 2009 WL 727777, denied attorney's motion for summary judgment and granted client's cross motion to dismiss the complaint. Attorney appealed.

Holdings: The Supreme Court, Appellate Division, Andrias, J., held that:
(1) retainer agreements between attorney and client substantially complied with matrimonial rules, and
(2) attorney's failure to give client notice of right to arbitrate did not necessitate dismissal.

Affirmed.

West Headnotes

[1] Attorney and Client 45 ⇨130

45 Attorney and Client
45IV Compensation
45k130 k. Right to compensation in general. Most Cited Cases

Attorney and Client 45 ⇨153**45 Attorney and Client****45IV Compensation**

45k153 k. Deductions and forfeitures. Most Cited Cases

An attorney's utter failure to abide by rules pertaining to retainers, fee disputes, and arbitration in domestic relations matters precludes the attorney from collecting fees, even if the services were already rendered; however, where there has been substantial compliance with such matrimonial rules, an attorney will be allowed to recover the fees owed for services rendered, but not yet paid for. N.Y.Ct.Rules, § 1400.1 et seq.; N.Y.Ct.Rules, § 136.1 et seq. (Repealed).

[2] Contracts 95 ⇨9(1)**95 Contracts****95I Requisites and Validity**

95I(A) Nature and Essentials in General

95k9 Certainty as to Subject-Matter

95k9(1) k. In general. Most Cited Cases

Contracts 95 ⇨15**95 Contracts****95I Requisites and Validity**

95I(B) Parties, Proposals, and Acceptance

95k15 k. Necessity of assent. Most Cited Cases

An enforceable contract requires mutual assent to its essential terms and conditions; if an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract.

[3] Alternative Dispute Resolution 25T ⇨134(1)

72 A.D.3d 182, 894 N.Y.S.2d 398, 2010 N.Y. Slip Op. 00788
(Cite as: 72 A.D.3d 182, 894 N.Y.S.2d 398)

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate
25Tk131 Requisites and Validity
25Tk134 Validity
25Tk134(1) k. In general.
Most Cited Cases

**Alternative Dispute Resolution 25T ⇐
143**

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate
25Tk142 Disputes and Matters
Arbitrable Under Agreement
25Tk143 k. In general. Most
Cited Cases

A court will not order a party to submit to arbitration absent evidence of that party's unequivocal intent to arbitrate the relevant dispute and unless the dispute falls clearly within that class of claims which the parties agreed to refer to arbitration.

**[4] Alternative Dispute Resolution 25T ⇐
134(1)**

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate
25Tk131 Requisites and Validity
25Tk134 Validity
25Tk134(1) k. In general.
Most Cited Cases

**Alternative Dispute Resolution 25T ⇐
137**

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate
25Tk136 Construction
25Tk137 k. In general. Most
Cited Cases
There is no requirement that an agree-

ment to arbitrate be encompassed in a single comprehensive document, and where it is clear from the language of an agreement that the parties intended to be bound and there exists an objective method for supplying a missing term, the court should endeavor to hold the parties to their bargain.

[5] Attorney and Client 45 ⇐153

45 Attorney and Client
45IV Compensation
45k153 k. Deductions and forfeitures. Most Cited Cases

Retainer agreements between attorney and client in matrimonial action substantially complied with rules pertaining to retainers, fee disputes, and arbitration in such matters, such that attorney was not precluded from collecting fees on such grounds; retainer agreements and statement of client's rights and responsibilities, when read to together, advised client of rights to which she was entitled to by law or by custom, agreements were drafted in accordance with matrimonial rules, having annexed a statement of client's rights and responsibilities, and agreements set forth in plain language the terms of compensation and nature of services to be rendered. N.Y.Ct.Rules, § 1400.1 et seq.; N.Y.Ct.Rules, § 136.1 et seq. (Repealed).

**[6] Alternative Dispute Resolution 25T ⇐
125**

25T Alternative Dispute Resolution
25TII Arbitration
25TII(A) Nature and Form of Proceeding
25Tk125 k. Compulsory arbitration. Most Cited Cases

Attorney and Client 45 ⇐160

72 A.D.3d 182, 894 N.Y.S.2d 398, 2010 N.Y. Slip Op. 00788
 (Cite as: 72 A.D.3d 182, 894 N.Y.S.2d 398)

45 Attorney and Client
 45IV Compensation
 45k157 Actions for Compensation
 45k160 k. Conditions precedent.
 Most Cited Cases

Attorney's fee dispute with client in matrimonial matter was not subject to arbitration under matrimonial rules, and thus attorney's failure to give client written notice of right to arbitrate in advance of litigating his fee dispute did not necessitate dismissal of his suit for fees, where amount in dispute exceeded \$100,000. N.Y.Ct.Rules, § 1400.1 et seq.; N.Y.Ct.Rules, § 136.1 et seq. (Repealed).

****399** Peter F. Edelman, New York, appellant pro se.

Howard Benjamin, New York, for respondent.

LUIS A. GONZALEZ, P.J., RICHARD T. ANDRIAS, DIANNE T. RENWICK, SALLIE MANZANET-DANIELS, JJ.

ANDRIAS, J.

***183** Pursuant to three separate written retainer agreements, the plaintiff-appellant, an attorney, represented the defendant-respondent in a matrimonial action and related appeals. In 2007, he commenced this action against plaintiff to recover, under theories of breach of contract and of account stated, the sum of \$155,934.05, plus interest, representing fees allegedly due for services rendered under the retainer agreements. Plaintiff also sought to recover the attorney's fees incurred in the prosecution of this action.

Plaintiff moved for summary judgment and defendant cross-moved to dismiss the complaint. Characterizing the issue before it as "one of pure contract interpretation,"

the Supreme Court dismissed the complaint, finding that plaintiff breached the unambiguous retainer agreements by failing to give defendant 30 days' notice of her right to fee arbitration prior to commencing suit. We now consider whether in performing its analysis, the Supreme Court erred when it held that the retainer agreements may be construed without reference to the matrimonial rules governing retainers, fee disputes and arbitration in domestic relation matters that were in effect at the time the retainer agreements were executed.

[1] The rules pertaining to retainers, fee disputes and arbitration in domestic relations matters, found at 22 NYCRR part 1400 (the matrimonial rules), were "**promulgated to address abuses in the practice of matrimonial law and to protect the public**" (*Julien v. Machson*, 245 A.D.2d 122, 122, 666 N.Y.S. 2d 147 [1997]). At the time the parties executed the retainer agreements in this case, March 10, 1997, August 17, 1999 and July 6, 2001, respectively, arbitration was governed by 22 NYCRR part 136, which provided for binding arbitration of fee disputes at the client's option (22 NYCRR 136.2), where the amount in dispute did not exceed \$100,000 ***184** (22 NYCRR 136.4 [a]). An attorney's "**utter failure to abide by these rules**" precludes the attorney from collecting fees, even if the services were already rendered (*Julien v. Machson*, *supra*; see also *Mulcahy v. Mulcahy*, 285 A.D.2d 587, 728 N.Y.S.2d 90 [2001]). Where there has been "substantial compliance" with the matrimonial rules, an attorney will be allowed to recover the fees owed for services rendered, but not yet been paid for. (See *Flanagan v. Flanagan*, 267 A.D.2d 80, 699 N.Y.S.2d 406 [1999]; *Markard v. Markard*, 263 A.D.2d 470, 692 N.Y.S.2d 733 [1999]).

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(Cite as: 72 A.D.3d 182, 894 N.Y.S.2d 398)

In granting defendant's motion for summary judgment dismissing the complaint **400 on the ground that the plaintiff-attorney failed to give defendant notice of her right to arbitrate prior to commencing suit, the Supreme Court found that defendant was entitled to such notice "regardless of the existence of 22 NYCRR 136, *et seq.*, and regardless of plaintiff's unexpressed intention that the arbitration be governed by that section" because the unambiguous "writing contains no reference at all to 22 NYCRR 136, *et seq.*, no reference to a 30 day period to respond to a notice of a fee dispute [*sic*], and no mention of a jurisdictional limit to disputes that defendant may arbitrate." The court further stated that even if the agreement was ambiguous, it must be construed against plaintiff as drafter.

Because we do not believe that the parties' retainer agreements may be interpreted without reference to the matrimonial rules in effect at the time they were entered, which governed the attorney-client relationship in domestic relations matters with respect to fee disputes and arbitration, we reverse the grant of summary judgment in defendant's favor and reinstate the complaint. A contrary result would do violence to the very rules we endeavor to enforce and penalize an attorney who complied in all respects with the matrimonial rules in effect at the time each retainer agreement was drafted and executed.

[2][3] Under New York law, an enforceable contract requires mutual assent to its essential terms and conditions. If an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract (*see Matter of 166 Mamaroneck Ave. Corp. v. 151 E. Post Rd. Corp.*, 78 N.Y.2d 88, 91, 571 N.Y.S.2d

686, 575 N.E.2d 104 [1991]; *Mellen & Jayne, Inc. v. AIM Promotions, Inc.*, 33 A.D.3d 676, 823 N.Y.S.2d 99 [2006]). "[A] court will not order a party to submit to arbitration absent evidence of that party's unequivocal intent to arbitrate the relevant dispute and unless the dispute falls clearly within that class of claims which the parties agreed to refer to arbitration" (*Primavera Labs. v. Avon Prods.*, 297 A.D.2d 505, 505, 747 N.Y.S.2d 16 [2002] [internal quotation marks and citations omitted]).

*185 In the case before us, by agreement dated February 28, 1997 and executed March 10, 1997, plaintiff was retained by defendant to prosecute an action for divorce in *Poster v. Poster*. The agreement provided in pertinent part:

While I seek to avoid any disputes concerning the payment of our fee, in the event such a dispute does arise, you have the right, at your election, to seek arbitration, the results of which are binding on both parties. *I 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 I shall enclose a copy of the arbitration rules and a form for requesting arbitration.* If no action is pending and if you do not timely enforce your rights to enter into fee arbitration, I may commence legal proceedings against you to recover any unpaid fee (emphasis added).

By agreement dated May 10, 1999 and executed August 17, 1999, and by agreement dated July 3, 2001 and executed July 6, 2001, plaintiff was also retained by defendant to represent her in appeals related to the divorce action. Each of these retainers included the same arbitration clause.

72 A.D.3d 182, 894 N.Y.S.2d 398, 2010 N.Y. Slip Op. 00788
(Cite as: 72 A.D.3d 182, 894 N.Y.S.2d 398)

Attached to each of the three retainer agreements was a copy of a "Statement of Client's Rights and Responsibilities" which informed the client of what he or she is "entitled to by law or by custom." Consistent with the retainer agreement, the statement provides, among other things, **401 that "[i]n the event of a fee dispute, you have the right to seek arbitration, the results of which are binding. *Your attorney will provide you with the necessary information regarding arbitration in the event of a fee dispute, or upon your request*" (emphasis added).

[4] While these retainer agreements evidence a clear intent to give defendant the right to binding arbitration of fee disputes at her option, to be governed by arbitration rules to be provided by plaintiff, material terms are missing in that they do not specify what those rules are or identify the forum for the arbitration. However, there is no requirement that an agreement to arbitrate be encompassed in "a single comprehensive document" (5 N.Y. Jur. 2d, Arbitration and Award § 17, at 45-46; see also *American States Ins. Co. v. Sorrell*, 258 A.D.2d 782, 783, 684 N.Y.S.2d 711 [1999]), and where it is clear from the language of an agreement that the parties intended to be bound and there exists an objective method for supplying a missing term, the court should endeavor to hold the *186 parties to their bargain (*166 Mamaroneck Ave.*, 78 N.Y.2d at 91, 571 N.Y.S.2d 686, 575 N.E.2d 104; see also *Cobble Hill Nursing Home v. Henry & Warren Corp.*, 74 N.Y.2d 475, 483, 548 N.Y.S.2d 920, 548 N.E.2d 203 [1989] cert. denied 498 U.S. 816, 111 S.Ct. 58, 112 L.Ed.2d 33 [1990] [before rejecting an agreement as indefinite, a court must be satisfied that the agreement cannot be rendered reasonably certain by reference to an extrinsic stand-

ard that makes its meaning clear]; *Marshall Granger & Co., CPA's, P.C. v. Sanossian & Sardis, LLP*, 15 A.D.3d 631, 632, 792 N.Y.S.2d 498 [2005]).

[5] The subject retainer agreements and statement of client's rights and responsibilities, read together, advise defendant of the rights to which she was "entitled to by law or by custom," including the right to arbitrate fee disputes, and reference arbitration rules to be provided by plaintiff upon a fee dispute or at defendant's request. Given this language, applying the principles of contract interpretation set forth above, there is an objective method to attach a sufficiently definite meaning to the arbitration clause and to supply the missing information as to the arbitration forum and governing rules, to wit, the matrimonial rules, which, pursuant to 22 NYCRR 1400.1, "apply to all attorneys who ... undertake to represent a client in a claim, action or proceeding ... for divorce."

An analysis of the retainer agreements demonstrates that they were drafted in accordance with the matrimonial rules. Pursuant to 22 NYCRR 1400.2, the attorney must 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." Here, a copy of that statement was undisputedly annexed to each retainer agreement.

Pursuant to 22 NYCRR 1400.3, the matrimonial attorney is required to "execute a written agreement with the client setting forth in plain language the terms of compensation and the nature of services to be rendered ..." Section 1400.3 further provides for the inclusion of certain information in the retainer agreement, in-

72 A.D.3d 182, 894 N.Y.S.2d 398, 2010 N.Y. Slip Op. 00788
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cluding the amount of the advance retainer and what it covers, the client's right to cancel, the hourly rate of each person whose time may be charged to the client, and the disbursements not included in the fee. Each of these requirements is addressed in the subject retainer agreements.

Further, as to arbitration, 22 NYCRR 1400.3 provides:

****402** 13. Should a dispute arise concerning the attorney's fee, the client may seek arbitration; the attorney shall provide information concerning fee arbitration in the event of such dispute or upon the client's request.

***187** Again, each of the retainer agreements and statement of client's rights and responsibilities conforms with 22 NYCRR 1400.3, which did not mandate that the applicable court rule governing the arbitration be expressly identified in the retainer agreement. It is worthy of note that in contrast, 22 NYCRR 1215.1(b)(2), effective March 4, 2002, requires that the retainer agreement "where applicable, shall provide that the client may have a right to arbitrate fee disputes *under Part 137 of the Rules of the Chief Administrator*" (emphasis added). Significantly, the arbitration clause used by plaintiff substantially conformed with the Sample Retainer Agreement Forms then approved by the N.Y. Chapter of the American Academy of Matrimonial Lawyers and the Family Law Section of N.Y.S. Bar Association, two of the leading organizations dedicated to enforcing and enhancing professionalism in this often contentious area of law.

[6] Applying the matrimonial rules, the complaint should not have been dismissed based on plaintiff's failure to provide defendant with an arbitration notice in ad-

vance of litigation. 22 NYCRR 1400.7, "Fee Arbitration" provides:

In the event of a fee dispute between attorney and client, the client may seek to resolve the dispute by arbitration, pursuant to a fee arbitration program established by the Chief Administrator of the Courts and subject to the approval of the justices of the Appellate Divisions.

Under 22 NYCRR Part 136, a client could request arbitration pursuant to 22 NYCRR 136.5(e) either in response to notice from the attorney pursuant to section 136.5(a), upon consent pursuant to section 136.5(d), or upon the client's own initiative.

Under 22 NYCRR 136.5[a], where a fee dispute arises, the attorney must inform the client in writing that he or she has 30 days from receipt of the notice in which to elect to resolve the dispute by arbitration. The attorney must also include standard instructions developed by the Chief Administrator regarding the arbitration procedure, and a copy of a request for arbitration. "If the client does not file the request for arbitration within the 30-day period, the attorney may commence an action to recover the fee and the client no longer shall have the right to request arbitration pursuant to this Part with respect to the fee dispute at issue" (22 NYCRR 136.5[b]). ***188** "An attorney who institutes an action to recover a fee must allege in the complaint that the client received notice under this rule of his or her right to pursue arbitration and did not file a timely request for arbitration" (22 NYCRR 137.5 [c]).

While these provisions, which are consistent with the arbitration clause in the retainer agreement, impose a notice requirement, pursuant to 22 NYCRR 136.4,

72 A.D.3d 182, 894 N.Y.S.2d 398, 2010 N.Y. Slip Op. 00788
(Cite as: 72 A.D.3d 182, 894 N.Y.S.2d 398)

“Jurisdiction”,

(a) The arbitration program may not hear any fee dispute in which the amount in dispute is in excess of \$100,000, including disbursements.

(b) The Administrative Judge may decline to accept or continue to arbitrate a dispute in which substantial legal questions are raised in addition to the basic fee dispute or with respect to which no attorney's services have been rendered for at least two years.

Accordingly, in the event of a fee dispute between a matrimonial attorney and client, under Part 136 the client had the right to **403 seek binding arbitration of the dispute *provided* that the amount in dispute was not in excess of \$100,000.

Here, in accordance with the matrimonial rules, plaintiff presented executed written retainer agreements (*see* 22 NYCRR 1400.3) which contain a fee arbitration provision (*see* 22 NYCRR 1400.7) and attached a copy of the statement of client's rights and responsibilities (*see* 22 NYCRR 1400.2). In his complaint, plaintiff alleged “[t]hat neither Part 136, nor Part 137 of the Uniform Rules is applicable because of the amount in controversy, and, as to the latter Part, also because representation of Poster commenced in 1997.” Given that it is undisputed that the amount in dispute exceeds \$100,000, the parties' fee dispute is not subject to arbitration under the matrimonial rules, and plaintiff's complaint states a valid cause of action that should not have been dismissed on the basis of his failure to give defendant notice of her right to arbitrate (*compare Migdal, Pollack & Rosenkrantz LLP v. Coleman*, 6 Misc.3d 378, 789 N.Y.S.2d 656 [Sup. Ct. N.Y. County 2004] [“In conclusion, the court

finds that since the amount in dispute with respect to the fees covered by part 136 was less than \$100,000 at the time of the filing of this action, and plaintiff failed to give the notice with respect to arbitration required therein and thus was unable to assert in its complaint the allegation of compliance as required by section 136.5(c), the complaint as pleaded (for ‘legal services in connection with the dissolution of his marriage’) is dismissed”]).

*189 However, issues of fact preclude the grant of summary judgment in plaintiff's favor and the order should be affirmed in that respect. Indeed, with respect to plaintiff's request for summary judgment on his cause of action for an account stated, the Supreme Court (Judith J. Gische, J.) observed at a December 20, 2002 hearing in connection with defendant's application to have plaintiff turn over her file, that “there is a significant dispute between [plaintiff] and the client regarding the amount of fees that are outstanding.”

Accordingly, the order of the Supreme Court, New York County (Emily Jane Goodman, J.), entered March 12, 2009, which denied plaintiff's motion for summary judgment and granted defendant's cross motion to dismiss the complaint should be modified, on the law, to deny defendant's cross motion to dismiss and to reinstate the complaint, and otherwise affirmed, without costs.

Order, Supreme Court, New York County (Emily Jane Goodman, J.), entered March 12, 2009, modified, on the law, to deny defendant's cross motion to dismiss the complaint and to reinstate said complaint, and otherwise affirmed, without costs.

All concur.

72 A.D.3d 182, 894 N.Y.S.2d 398, 2010 N.Y. Slip Op. 00788
(Cite as: 72 A.D.3d 182, 894 N.Y.S.2d 398)

N.Y.A.D. 1 Dept.,2010.
Edelman v. Poster
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N.Y. Slip Op. 00788

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85 A.D.3d 614, 927 N.Y.S.2d 19, 2011 N.Y. Slip Op. 05406
(Cite as: 85 A.D.3d 614, 927 N.Y.S.2d 19)

C

Supreme Court, Appellate Division, First
Department, New York.

Dany MOYAL,
Plaintiff–Respondent–Appellant,

v.

Marc MOYAL, Defend-
ant–Appellant–Respondent.

June 23, 2011.

Background: Parties in divorce proceedings appealed from decision of Supreme Court, New York County, Marilyn B. Der-showitz, Special Referee, valuing and including certain marital assets in the distributive award, awarding wife maintenance, counsel fees and expert fees, and holding wife liable for 50% of the parties' tax liability.

Holdings: The Supreme Court, Appellate Division, held that:

- (1) Special Referee did not sufficiently explain her basic concurrence in the valuation of the husband's business by the wife's appraiser;
- (2) husband's \$1.2 million loan receivable should have been included as part of the marital estate;
- (3) it was an improvident exercise of discretion to value the parties' condominium in Israel based on the price of the husband's sale to a childhood friend;
- (4) duration and amount of maintenance awarded to wife was properly based on relevant factors and evidence;
- (5) wife was properly assessed 50% of the parties' tax liability for underreporting income; and
- (6) computer printout of counsel's hours and services was not an adequate substitute for the itemized bills required by statute.

Affirmed as modified.

West Headnotes

[1] Divorce 134 ⇌ 879

134 Divorce
134V Spousal Support, Allowances, and
Disposition of Property
134V(D) Allocation of Property and
Liabilities; Equitable Distribution
134V(D)9 Proceedings for Divi-
sion or Assignment
134k878 Verdict, Findings, or
Determination

134k879 k. In general.

Most Cited Cases

Divorce 134 ⇌ 1323(7)

134 Divorce
134V Spousal Support, Allowances, and
Disposition of Property
134V(I) Appeal
134k1320 Determination and Dis-
position of Cause
134k1323 Property
134k1323(7) k. Valuation.

Most Cited Cases

Special Referee in divorce proceedings did not sufficiently explain her basic concurrence in the valuation of the husband's business by the wife's appraiser, despite the numerous recognized flaws in his report, requiring remand.

[2] Divorce 134 ⇌ 715

134 Divorce
134V Spousal Support, Allowances, and
Disposition of Property
134V(D) Allocation of Property and
Liabilities; Equitable Distribution
134V(D)2 Property Subject to

85 A.D.3d 614, 927 N.Y.S.2d 19, 2011 N.Y. Slip Op. 05406
(Cite as: 85 A.D.3d 614, 927 N.Y.S.2d 19)

C

Supreme Court, Appellate Division, First
Department, New York.

Dany MOYAL,
Plaintiff–Respondent–Appellant,

v.

Marc MOYAL, Defend-
ant–Appellant–Respondent.

June 23, 2011.

Background: Parties in divorce proceedings appealed from decision of Supreme Court, New York County, Marilyn B. Dershowitz, Special Referee, valuing and including certain marital assets in the distributive award, awarding wife maintenance, counsel fees and expert fees, and holding wife liable for 50% of the parties' tax liability.

Holdings: The Supreme Court, Appellate Division, held that:

- (1) Special Referee did not sufficiently explain her basic concurrence in the valuation of the husband's business by the wife's appraiser;
- (2) husband's \$1.2 million loan receivable should have been included as part of the marital estate;
- (3) it was an improvident exercise of discretion to value the parties' condominium in Israel based on the price of the husband's sale to a childhood friend;
- (4) duration and amount of maintenance awarded to wife was properly based on relevant factors and evidence;
- (5) wife was properly assessed 50% of the parties' tax liability for underreporting income; and
- (6) computer printout of counsel's hours and services was not an adequate substitute for the itemized bills required by statute.

Affirmed as modified.

West Headnotes

[1] Divorce 134 ¶879

134 Divorce

134V Spousal Support, Allowances, and
Disposition of Property

134V(D) Allocation of Property and
Liabilities; Equitable Distribution

134V(D)9 Proceedings for Divi-
sion or Assignment

134k878 Verdict, Findings, or
Determination

134k879 k. In general.

Most Cited Cases

Divorce 134 ¶1323(7)

134 Divorce

134V Spousal Support, Allowances, and
Disposition of Property

134V(I) Appeal

134k1320 Determination and Dis-
position of Cause

134k1323 Property

134k1323(7) k. Valuation.

Most Cited Cases

Special Referee in divorce proceedings did not sufficiently explain her basic concurrence in the valuation of the husband's business by the wife's appraiser, despite the numerous recognized flaws in his report, requiring remand.

[2] Divorce 134 ¶715

134 Divorce

134V Spousal Support, Allowances, and
Disposition of Property

134V(D) Allocation of Property and
Liabilities; Equitable Distribution

134V(D)2 Property Subject to

85 A.D.3d 614, 927 N.Y.S.2d 19, 2011 N.Y. Slip Op. 05406
(Cite as: 85 A.D.3d 614, 927 N.Y.S.2d 19)

Distribution or Division

134k688 Particular Interests as
Separate or Marital Property

134k715 k. Rights as creditor; notes. Most Cited Cases

Husband's \$1.2 million loan receivable should have been included as part of the marital estate in divorce proceedings, where husband failed to show that he did not use marital funds to make the loan.

[3] Divorce 134 ⚡765

134 Divorce

134V Spousal Support, Allowances, and
Disposition of Property

134V(D) Allocation of Property and
Liabilities; Equitable Distribution

134V(D)4 Valuation of Property
or Interest in General

134k762 Evidence in General

134k765 k. Weight and
sufficiency. Most Cited Cases

In light of a substantially higher offer and appraisals, it was an improvident exercise of discretion by Special Referee in divorce proceedings to value the parties' condominium in Israel based on the price of the husband's sale to a childhood friend in a transaction that was not documented in any way, the proceeds of which were reduced by the amount of an undocumented loan the husband claimed to have made to the friend.

[4] Divorce 134 ⚡824

134 Divorce

134V Spousal Support, Allowances, and
Disposition of Property

134V(D) Allocation of Property and
Liabilities; Equitable Distribution

134V(D)6 Methods of Distribution

134k824 k. Notes and payment over time; interest. Most Cited Cases

Wife in divorce proceedings was entitled to post-decision interest on the distributive award. McKinney's CPLR 5002.

[5] Evidence 157 ⚡571(7)

157 Evidence

157XII Opinion Evidence

157XII(F) Effect of Opinion Evidence

157k569 Testimony of Experts

157k571 Nature of Subject

157k571(7) k. Value. Most

Cited Cases

Parties' marital apartment was properly valued, in divorce proceedings, based on the factual testimony of an experienced broker with knowledge of prices in the same building.

[6] Divorce 134 ⚡576

134 Divorce

134V Spousal Support, Allowances, and
Disposition of Property

134V(C) Spousal Support

134k567 Grounds and Defenses
in Determining Existence and Amount of
Obligation

134k576 k. Earnings; earning
capacity. Most Cited Cases

Divorce 134 ⚡583

134 Divorce

134V Spousal Support, Allowances, and
Disposition of Property

134V(C) Spousal Support

134k567 Grounds and Defenses
in Determining Existence and Amount of
Obligation

134k583 k. Age of parties.
Most Cited Cases

Divorce 134 ⚡606

134 Divorce

85 A.D.3d 614, 927 N.Y.S.2d 19, 2011 N.Y. Slip Op. 05406
(Cite as: 85 A.D.3d 614, 927 N.Y.S.2d 19)

134V Spousal Support, Allowances, and
Disposition of Property

134V(C) Spousal Support

134k605 Extent of Time of Pay-
ments

134k606 k. In general. Most
Cited Cases

Duration and amount of maintenance
awarded to wife in divorce proceedings
was properly based on relevant factors and
evidence; wife was in her 50s, was in a
long-term marriage, lacked business exper-
ience or a degree, and had not been in the
work force for years while raising children.

[7] Divorce 134 ⇌839

134 Divorce

134V Spousal Support, Allowances, and
Disposition of Property

134V(D) Allocation of Property and
Liabilities; Equitable Distribution

134V(D)7 Debts and Liabilities
in General

134k834 Particular Debts and
Liabilities

134k839 k. Taxes and as-
sessments. Most Cited Cases

Wife in divorce proceedings was prop-
erly assessed 50% of the parties' tax liabil-
ity for underreporting income, where she
clearly benefited from the use of the funds
and wife was not an innocent spouse not on
notice of any wrongdoing.

[8] Divorce 134 ⇌919(3)

134 Divorce

134V Spousal Support, Allowances, and
Disposition of Property

134V(E) Settlement Agreements and
Stipulations

134k916 Construction and Opera-
tion

134k919 Effect in Dissolution
Proceeding in General

134k919(3) k. Property di-
vision and distribution. Most Cited Cases

Divorce 134 ⇌926

134 Divorce

134V Spousal Support, Allowances, and
Disposition of Property

134V(E) Settlement Agreements and
Stipulations

134k916 Construction and Opera-
tion

134k926 k. Debts and liabil-
ities. Most Cited Cases

Husband was entitled to a credit against
the distributive award for payments he
made during the pendency of divorce pro-
ceedings relating to the marital real estate
and for tax counsel and accountant fees,
despite wife's claim that husband agreed to
make the payments pursuant to a stipula-
tion that did not recite that he could seek a
credit against any distributive award on ac-
count of the payments, where stipulation
did not purport to disavow such right.

[9] Divorce 134 ⇌1170(7)

134 Divorce

134V Spousal Support, Allowances, and
Disposition of Property

134V(H) Counsel Fees, Costs, and
Expenses

134k1170 Applications and Pro-
ceedings Between Parties

134k1170(7) k. Affidavit,
summary or itemization. Most Cited Cases

Computer printout of hours and ser-
vices provided by wife's counsel in divorce
proceedings was not an adequate substitute
for the itemized bills required by statute.
N.Y.Ct.Rules, § 1400.2.

**21 Bender Rosenthal Isaacs & Richter
LLP, New York (Susan L. Bender of coun-
sel), for appellant-respondent.

85 A.D.3d 614, 927 N.Y.S.2d 19, 2011 N.Y. Slip Op. 05406
(Cite as: 85 A.D.3d 614, 927 N.Y.S.2d 19)

Sheresky Aronson Mayefsky & Sloan, LLP, New York (Lawrence B. Trachtenberg of counsel), for respondent-appellant.

ANDRIAS, J.P., FRIEDMAN, MCGUIRE, ACOSTA, DeGRASSE, JJ.

*614 Judgment, Supreme Court, New York County (Marilyn B. Dershowitz, Special Referee), entered January 6, 2010, valuing and including certain marital assets in the distributive award, awarding plaintiff wife maintenance, counsel fees and expert fees, and holding the wife liable for 50% of the parties' tax liability, unanimously modified, on the law and in the exercise of discretion, to the extent of vacating the valuations of Marcotex and of the parties' condominium in Israel and remanding for a determination of their values, including defendant husband's loan receivable in the marital estate, awarding the husband a credit against the distributive award in the amount of \$182,382 for payments he made during the pendency of the action, and awarding the wife post-decision interest on the distributive award, and otherwise affirmed, without costs. Appeals from orders, same court and Special Referee, entered August 25, 2009 and October 13, 2009, unanimously dismissed, without costs, as subsumed in the appeal from the judgment.

[1][2][3][4] While “[t]here is no uniform rule for fixing the value of a business for the purpose of equitable distribution” (*Wasserman v. Wasserman*, 66 A.D.3d 880, 882, 888 N.Y.S.2d 90 [2009]), the Special Referee did not sufficiently explain her basic concurrence in the valuation of the husband's business by the wife's appraiser (*see Capasso v. Capasso*, 119 A.D.2d 268, 272, 506 N.Y.S.2d 686 [1986]) despite the numerous recognized flaws in his report, in-

cluding, among other things, *615 the insufficient examination and murky explanation of its accounts receivable, the unclear rationale for the particular earnings multiple chosen, the inadequate explanation for the application of a gross profit margin, unsubstantiated assumptions regarding personal use of business credit cards and the consideration of industry trends without adequate basis. The husband's \$1.2 million loan receivable should have been included as part of the marital estate, since he did not carry his burden to show that he did not use marital funds to make the loan (*see Sagarin v. Sagarin*, 251 A.D.2d 396, 674 N.Y.S.2d 127 [1998]). We note, however, that our determination with respect to this receivable, owed to the husband on account of his business, is without prejudice to any arguments the parties may make concerning the effect of the debt on the value of the business. In light of a substantially higher offer and appraisals, it was an improvident exercise of discretion to value the parties' condominium in Israel based on the price of the husband's sale to a childhood friend in a transaction that was not documented in any way (*see Terico v. Terico*, 222 A.D.2d 219, 634 N.Y.S.2d 121 [1995]), the proceeds of which were reduced by the amount of an undocumented loan the husband claimed to have made to the friend. The wife is entitled to **22 post-decision interest on the distributive award, which is mandatory (*see CPLR 5002; Wallach v. Wallach*, 204 A.D.2d 211, 212, 612 N.Y.S.2d 33 [1994]).

[5][6][7] The wife failed to prove the value of the husband's interests in Merryson and Royal Textiles (*see Davis v. Davis*, 128 A.D.2d 470, 476, 513 N.Y.S.2d 405 [1987]) or rebut his testimony regarding the depressed state and lack of value of these businesses at the time of trial. The

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marital apartment was properly valued based on the factual testimony of an experienced broker with knowledge of prices in the same building (*see Matter of Semple School for Girls v. Boyland*, 308 N.Y. 382, 388, 126 N.E.2d 294 [1955]). The duration and amount of maintenance awarded, to a wife in her 50s in a longterm marriage, who lacked business experience or a degree and had not been in the work force for years while raising children, was properly based on the relevant factors and evidence (*see Naimollah v. De Ugarte*, 18 A.D.3d 268, 271, 795 N.Y.S.2d 525 [2005]). The wife was properly assessed 50% of the parties' tax liability for underreporting income. She clearly benefitted from the use of the funds and the circumstances of this case are unlike those involving a failure to file returns with an innocent spouse not on notice of any wrongdoing (*cf. Frey v. Frey*, 68 A.D.3d 1052, 892 N.Y.S.2d 159 [2009]; *Costello v. Costello*, 304 A.D.2d 517, 519, 757 N.Y.S.2d 588 [2003]).

[8] The Special Referee clearly and reasonably linked the award of \$5,000 in maintenance for 15 years to the distributive award and we reject the husband's claim that he is entitled to a credit *616 against the award because the monthly pendente lite maintenance exceeded the amount ultimately awarded (*see Wechsler v. Wechsler*, 58 A.D.3d 62, 84, 866 N.Y.S.2d 120 [2008], *appeal dismissed* 12 N.Y.3d 883, 883 N.Y.S.2d 177, 910 N.E.2d 1007 [2009]). We agree with the husband's claim that he is entitled to such a credit for payments he made during the pendency of the action relating to the marital real estate (i.e., mortgage, maintenance, and real estate taxes) and for tax counsel and accountant fees (*Johnson v. Chapin*, 49 A.D.3d 348, 360, 854 N.Y.S.2d 18 [2008], *affd.* 12 N.Y.3d 461, 881 N.Y.S.2d 373, 909 N.E.2d

66 [2009]). The wife argues that no such credit should be awarded because the husband agreed to make the payments pursuant to a stipulation which did not recite that he could seek a credit against any distributive award on account of the payments. Nor, of course, does the stipulation purport to disavow the right he otherwise would have to seek such a credit. This argument, which essentially asks us to hold that the husband thereby waived that right, is meritless. The stipulation is silent on the subject and we note that acceptance of the wife's argument would discourage parties in matrimonial actions from voluntarily entering into such stipulations.

[9] In a thoughtful, written opinion, the Special Referee awarded the wife an additional \$65,000 in counsel fees, substantially less than the total amount requested (\$161,972.50, an amount that included a prior award of \$25,000). In support of her decision to award less than the amount requested, the Special Referee took into account, *inter alia*, the substantial equitable distribution award, the \$5,000 maintenance award, the fact that the wife "[p]lainly ... has more liquid assets than the husband," that numerous motions by the wife were "soundly defeated" and that "certain litigation strategy by the wife's counsel was non-productive." The Special Referee noted the failure of the wife's counsel to comply with 22 NYCRR 1400.2, which entitles the client "to receive a written, itemized bill on a regular basis, at **23 least every 60 days." The Special Referee also noted that counsel had provided a "mere four bills" over a 26-month period of the representation. As the husband argues, the bills "lumped together multiple legal services rendered and [a] total amount for ... all of those services." Indeed, one such bill lumped together dozens of separate services counsel

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provided and stated the total number of hours (136) for all the services. To be sure, a computer printout providing considerably more specificity concerning the number of hours spent on each day that services were provided was admitted into evidence at the hearing. But for that printout and counsel's testimony that the daily entries were prepared either contemporaneously or shortly thereafter, we would direct an additional reduction in the fee award. Without impugning counsel's integrity in the slightest, *617 we think it plain that the printout is not an adequate substitute for the itemized bills required by 22 NYCRR 1400.2. We agree with the Special Referee that "where there is a different individual to be charged by the court there should be an available higher level of scrutiny." Nonetheless, it appears that the Special Referee reduced the award on account of counsel's failure to comply with this requirement of 22 NYCRR 1400.2, one of the rules "promulgated to address abuses in the practice of matrimonial law" (*Julien v. Machson*, 245 A.D. 2d 122, 122, 666 N.Y.S. 2d 147 [1997]). Under all the circumstances of this case, we decline to exercise our discretion to further reduce the amount of the award.

We have considered the parties' other claims for affirmative relief and find them unavailing.

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85 A.D.3d 614, 927 N.Y.S.2d 19, 2011
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101 A.D.3d 678, 957 N.Y.S.2d 132, 2012 N.Y. Slip Op. 08283
(Cite as: 101 A.D.3d 678, 957 N.Y.S.2d 132)

H

Supreme Court, Appellate Division,
Second Department, New York.
Craig GOTTLIEB, appellant,
v.
Carolina GOTTLIEB, respondent.

Dec. 5, 2012.

Background: In action for divorce and ancillary relief, the Supreme Court, Queens County, Raffaele, J., denied husband's motion to modify prior visitation order, and granted wife's motion for attorney fees. Husband appealed.

Holding: The Supreme Court, Appellate Division, held that wife's failure to establish substantial compliance with regulations precluded award of attorney fees.

Affirmed in part and reversed in part.

West Headnotes

Divorce 134 ⇌ 1153

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(H) Counsel Fees, Costs, and Expenses

134k1153 k. Qualifications, skill and labor of counsel. Most Cited Cases

Divorce 134 ⇌ 1170(7)

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(H) Counsel Fees, Costs, and Expenses

134k1170 Applications and Proceedings Between Parties

134k1170(7) k. Affidavit,

summary or itemization. Most Cited Cases

Wife's failure to establish substantial compliance with regulations requiring execution and filing of retainer agreement setting forth terms of compensation and nature of services to be rendered, and requiring written, itemized bills at least every 60 days precluded award against husband for attorney fees in action for divorce and ancillary relief. N.Y.Ct.Rules, §§ 1400.2, 1400.3.

****133** Craig Gottlieb, Douglaston, N.Y., appellant pro se.

Ursula A. Gangemi, P.C., Brooklyn, N.Y., for respondent.

REINALDO E. RIVERA, J.P., RUTH C. BALKIN, JOHN M. LEVENTHAL, and CHERYL E. CHAMBERS, JJ.

***678** In an action for a divorce and ancillary relief, the plaintiff appeals (1) from an order of the Supreme Court, Queens County (Raffaele, J.), dated October 6, 2011, which denied his motion to modify a prior order of the same court dated June 17, 2010, directing visitation with the parties' child to be supervised by Diane Hessman, LCSW, and (2), as limited by his brief, from so much of an order of the same court dated October 7, 2011, as granted that branch of the defendant's motion which was for an award of an attorney's fee to the extent of awarding her an attorney's fee in the sum of \$10,000.

***679** ORDERED that the order dated October 6, 2011, is affirmed, without costs or disbursements; and it is further,

ORDERED that the order dated Octo-

101 A.D.3d 678, 957 N.Y.S.2d 132, 2012 N.Y. Slip Op. 08283
(Cite as: 101 A.D.3d 678, 957 N.Y.S.2d 132)

ber 7, 2011, is reversed insofar as appealed from, on the law, without costs or disbursements, and that branch of the defendant's motion which was for an award of an attorney's fee is denied in its entirety.

The court rules imposing certain requirements upon attorneys who represent clients in domestic relations matters (see 22 NYCRR part 1400) were designed to address abuses in the practice of matrimonial law and to protect the public (see *Hovanec v. Hovanec*, 79 A.D.3d 816, 817, 912 N.Y.S.2d 442). Substantial compliance with those rules is required, and such a showing must be made on a prima facie basis as part of the moving party's papers (see 22 NYCRR 1400.2, 1400.3; *Hovanec v. Hovanec*, 79 A.D.3d at 817, 912 N.Y.S.2d 442; *Gahagan v. Gahagan*, 51 A.D.3d 863, 864, 859 N.Y.S.2d 218). Here, counsel for the defendant failed to establish, prima facie, substantial compliance with 22 NYCRR 1400.2 and 1400.3 (see *Hovanec v. Hovanec*, 79 A.D.3d at 817, 912 N.Y.S.2d 442; *Bentz v. Bentz*, 71 A.D.3d 931, 932, 896 N.Y.S.2d 895). Accordingly, the Supreme Court should have denied that branch of the defendant's motion which was for an award of an attorney's fee.

The Supreme Court properly denied the plaintiff's motion to modify a prior order directing visitation with the child to be supervised by Diane Hessman, LCSW (*cf. Matter of D'Angelo v. Lopez*, 94 A.D.3d 1261, 1262, 942 N.Y.S.2d 662).

N.Y.A.D. 2 Dept., 2012.
Gottlieb v. Gottlieb
101 A.D.3d 678, 957 N.Y.S.2d 132, 2012
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