

**Jane Smith, Esq.**  
*Attorney at Law*  
123 Any Street  
Anywhere, DE, 19701

## **SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE**

### **1. Names and addresses of parties entering into the **SAMPLE** agreement**

THIS AGREEMENT FOR LEGAL SERVICES by and between Jane Smith, Esq. ("ATTORNEY") and \_\_\_\_\_. This agreement constitutes a binding legal contract and should be reviewed carefully.

### **2. Nature of the services to be rendered**

a. The client retains Jane Smith, Esq. to render services in connection with the prosecution of an action for divorce in Supreme Court, \_\_\_\_\_ County, including the attempt to negotiate a resolution of the matter.

b. It is further understood that:

This agreement does not apply to any appeals or post-judgment actions, proceedings, or applications and that, if such engagements 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. Nor does this agreement apply to any other proceedings commenced by either party unless another and separate retainer is executed. However, this retainer agreement is no way obligates the firm to accept such engagement in the future;

c. The client authorizes the attorney to take any steps which, in the sole discretion of the attorney, are deemed necessary or appropriate to protect the client's interest in the matter.

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

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

b. In addition to said retainer, the additional sum of \$\_\_\_\_\_ shall be paid for anticipated costs. Costs include, but are not limited to filing fees (\$210 for the purchase of an index number, \$95 for the purchase of a Request for Judicial Intervention, \$45 for the filing of a motion or cross motion, \$35 for the purchase of a note of issue following the purchase of an RJ) process server fees (approximately \$50 to \$200 per service) attorney services costs (which can range from approximately \$25 to \$100 per activity).

c. The client further understands that the hourly rates apply to all time expended relative to the client's matter, including but not limited to, office meetings and 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 the client's matter, preparation, review and revision of correspondence, pleadings, motions, disclosure demands and responses, affidavits and affirmations, or any other documents, memoranda, or papers relative to the client's matter, legal research, court appearances, conferences, file review, preparation time, travel time, and any other time expended on behalf or in connection with the client's matter.

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

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 attorney by court order, any unearned portion of the retainer fee you advanced to this firm shall be refunded to you.

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

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

b. 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, and the fair and

reasonable fee would be determined in accordance with legally accepted standards, with the unearned balance of the retainer fee, if any, being promptly refunded to you. Presently, the legally recognized elements of a reasonable fee, as set forth in the Code of Professional Responsibility, are as follows:

- The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly.
- The likelihood, of apparent or made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer. (You should know that the Law Firm, by accepting retention as your attorney, is clearly precluded from representing the opposing party against you.)
- The fee customarily charged in the locality for similar services.
- The amount involved and the results obtained.
- The time limitations imposed by the client or by circumstances.
- The nature and length of the professional relationship with the client.
- The experience, reputation and ability of the lawyer or lawyers performing the services.
- The experience, reputation and ability of the lawyer or lawyers performing the services.
- Whether the fee is fixed or contingent. (You should know that the DE Code of Professional Responsibility provides: "A lawyer shall not enter into an arrangement for, charge or collect ... [a]ny fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of maintenance, support, equitable distribution, or property settlement...")

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

a. You agree to pay us such additional fees and to reimburse us for our advances on your behalf that may be due from time to time not later than 30 days from the date that we shall submit a bill to you for same. If an amount due to us is not paid within 30 days after our statement to you of the amount due, interest at the rate of 9% per annum [or interest at the prevailing statutory rate as set forth in the Civil Practice Law and Rule) shall be added to the balance due to us.

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

a. The hourly rate for work in this matter is as follows:

(i) Jane Smith's hourly rate is \$300.00 per hour, for all legal work, in and out of court.

(ii) All other attorney's hourly rate is \$275.00 per hour for all legal work in and out of court.

(iii) Paralegal rate is \$150.00 per hour

b. In addition to the foregoing, your responsibility will include direct payment or reimbursement of this firm for disbursements advanced on your behalf, recording fees, charges of process servers, travel expenses, copying costs, messenger services, necessary secretarial overtime, transcripts and the customary fees of stenographers referable to examinations before trial in the event such examinations are utilized.

c. Depositions: Client shall pay the sum of \$750.00 at least 10 days prior to a scheduled Deposition to cover the costs of stenographer fees.

d. The minimum time increment is one twentieth of an hour (.05), and client shall be billed at this increment for all work under this agreement.

e. Each letter will be billed at a minimum of .10 hour and every telephone conversation at a minimum of .05 hour. 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.

f. The hourly rates set forth in this retainer agreement will remain in effect throughout the period of our representation for the matter set forth in this retainer agreement, unless changed by mutual consent of you and our firm, in which event any modification of the hourly rates shall be reduced to writing and signed by you and our firm.

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

(see clauses under no. 3, above)

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

a. 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 disbursement incurred by our firm in connection with your matter.

b. Upon receipt of our bill, you are expected to review the bill and promptly bring to our attention any objections you may have to the bill. While we strive to keep perfectly accurate time records, we recognize the possibility of human error, and we shall discuss with you any objection you raise to your bill. You will not be charged for time expended in discussing with us any aspect of the bill rendered to you.

c. Any objections to your bill shall be made in writing within 60 days of receiving each bill. If no written objection is made within that time, it will be presumed that you are in agreement with the charges.

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

a. We shall keep you informed of the status of your case, and to explain the laws pertinent to your situation, the available course of action, and the attendant risks. We shall notify you promptly of any developments in your case, including court appearances, and will be available for meetings and telephone conversations with you at mutually convenient times. We do insist that appointments be made for personal visits to our offices. Copies of all papers will be supplied to you as they are prepared (unless you request to the contrary), and you will be billed a reasonable photocopy charge (10 cents per page) for these materials which will be included in your periodic billing.

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

a. While we expect to be paid the fees due us in timely fashion, in situations

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

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

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### **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 form the court.**

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

b. In the event that any bill from the Law Firm remains unpaid beyond a 30 day period, the client agrees that the Law Firm may withdraw its representation, at the option of the firm. In the event that an action is pending, and absent your consent, an application must be made to the Court for such withdrawal. Where the fee is unpaid for the period set forth above, the client acknowledges that in connection with any such withdrawal application, that the account delinquency shall be good cause for withdrawal.

c. If the client discharges the attorney, the client agrees to inform the attorney in

writing of said discharge. Client further agrees to immediately provide the attorney with written authority to withdraw from the case.

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

While we seek to avoid any fee disputes with our clients, and rarely have such disputes, in the event such a dispute does arise, you are advised that you have the right, at your election, to seek arbitration to resolve the fee dispute. In such event, we shall advise you in writing by certified mail that you have 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. The decision resulting from arbitration is binding upon both you and this firm.

#### **14. Retention of expert**

You have been advised that in order for us to properly protect your interests, it may be necessary to retain outside experts such as appraisers, actuaries and accountants. You will be responsible for the costs incurred for any such service which in some cases may have to be paid in advance depending upon the requirement of the particular expert. No expert or appraiser shall be retained without your prior approval. If necessary and applicable, an application will be made to the Court to have your spouse pay all or part of the aforementioned fees for experts.

#### **15. Acknowledgment and understanding**

a. The client acknowledges that he or she has 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.

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

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

#### **16. Certifications**

We have informed you that pursuant to court rule, we are required, as your attorneys, to certify court papers submitted by you which contain statements of

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

### **17. No guarantees**

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

### **18. Review of this agreement by another law firm and right to review this agreement prior to signing.**

The client has a right to have this agreement reviewed by another law firm before signing it. Likewise, the client has the right to review this agreement outside the presence of the lawyer and away from the lawyer's office before signing it. Client understands that the attorney is not retained until the signed original agreement is returned to the lawyer along with the corresponding retainer.

### **19. Closing**

You are aware of the hazards of litigation and acknowledge that we have made no guarantees in the disposition of any phase of the matter for which you have retained this office. If this fee arrangement meets with you approval, kindly sign your name where indicated on the copy of this letter and return same to me in the envelope enclosed for your convenience. You acknowledge that pursuant to court rule, a copy of this retainer letter is required to be filed with the court in which your action is pending.

Kindly indicate your understanding and acceptance of the above by signing the letter below where indicated. We look forward to being of service to you in connection with this matter.

Very truly yours,

Jane Smith, Esq.

I have read and understand the above retainer, have received a copy and accept all of its terms:

Dated :

**SAMPLE DO NOT SIGN**

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Client Name