

Basic Attorney/Client Contract Provisions in Divorce Cases (provided by Paul L. Feinstein, Esq.)

Hiring a divorce attorney may be one of the more important financial transactions of your life. Accordingly, to safeguard yourself, you should have a written contract. Most attorneys are willing to provide that. Certain aspects of such a contract should be as follows:

- A description of what matter the lawyer will be representing you in.
- How much the initial retainer fee is, and whether or not it has been paid.
- How often will there be billings in the future.
- If billing is based in whole or in part upon hourly rates, the hourly rates for each person who will be rendering services. Some lawyers charge on a strictly hourly basis.
- A statement that the lawyer has not promised and cannot promise any results.
- Provisions for out of pocket fees, such as travel, expert fees, filing fees, service costs, subpoenas, court reporter and transcript costs, which are the client's sole responsibility. The lawyer has no duty to pay or advance any such expenses.

In Illinois, all billings and fees should depend upon the following factors:

A. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly.

B. The likelihood that the acceptance of this particular employment will preclude other employment by the lawyer.

C. The customary charge in the county in which the litigation takes place for similar legal services.

D. The amount involved and the results obtained.

E. The time limitation imposed by the client or by the circumstances.

F. The nature and length of the professional relationship between the lawyer and the client.

G. The experience, reputation and ability of the lawyer or lawyers performing the services.

The following statement of client's rights and responsibilities is required to be included in the contract by Illinois Law (each state has their own requirements or lack thereof):

(1)WRITTEN ENGAGEMENT AGREEMENT. The written engagement agreement, prepared by the counsel, shall clearly address the objectives of representation and detail the fee arrangement, including all material terms. If fees are to be based on criteria apart from, or in addition to, hourly rates, such criteria (e.g., unique time demands and/or utilization of unique expertise) shall be delineated. The client shall receive a copy of the written engagement agreement and any additional clarification requested and is advised not to sign any such agreement which the client finds to be unsatisfactory or does not understand.

(2)REPRESENTATION. Representation will commence upon the signing of the written engagement agreement. The counsel will provide competent representation, which requires legal knowledge, skill, thoroughness and preparation to handle those matters set forth in the written

engagement agreement. Once employed, the counsel will act with reasonable diligence and promptness, as well as use his best efforts on behalf of the client, but he cannot guarantee results. The counsel will abide by the client's decision concerning the objectives of representation, including whether or not to accept an offer of settlement, and will endeavor to explain any matter to the extent reasonably necessary to permit the client to make informed decisions regarding representation. During the course of representation and afterwards, the counsel may not use or reveal a client's confidence or secrets, except as required or permitted by law.

(3)COMMUNICATION. The counsel will keep the client reasonably informed about the status of representation and will promptly respond to reasonable requests for information, including any reasonable request for an estimate respecting future costs of the representation or an appropriate portion of it. The client shall be truthful in all discussions with the counsel and provide all information or documentation required to enable the counsel to provide competent representation. During representation, the client is entitled to receive all pleadings and substantive documents prepared on behalf of the client and every document received from any other counsel of record. At the end of the representation and on written request from the client, the counsel will return to the client all original documents and exhibits. In the event that the counsel withdraws from representation, or is discharged by the client, the counsel will turn over to the substituting counsel (or, if no substitutions, to the client) all original documents and exhibits together with complete copies of all pleadings and discovery within thirty (30) days of the counsel's withdrawal or discharge.

(4)ETHICAL CONDUCT. The counsel cannot be required to engage in conduct which is illegal, unethical, or fraudulent. In matters involving minor children, the counsel may refuse to engage in conduct which, in the counsel's professional judgment, would be contrary to the best interest of the client's minor child or children. A counsel who cannot ethically abide by his client's directions shall be allowed to withdraw from representation.

(5)FEES. The counsel's fee for services may not be contingent upon the securing of a dissolution of marriage, upon obtaining custody, or be based upon the amount of maintenance, child support, or property settlement received, except as specifically permitted under Supreme Court rules. The counsel may not require a non-refundable retainer fee, but must remit back any overpayment at the end of the representation. The counsel may enter into a consensual security arrangement with the client whereby assets of the client are pledged to secure payment of legal fees or costs, but only if the counsel first obtains approval of the Court. The counsel will prepare and provide the client with an itemized billing statement detailing hourly rates (and/or other criteria), time spent, tasks performed, and costs incurred on a regular basis, at least quarterly. The client should review each billing statement promptly and address any objection or error in a timely manner. The client will not be billed for time spent to explain or correct a billing statement. If an appropriately detailed written estimate is submitted to a client as to future costs for a counsel's

representation or a portion of the contemplated services (i.e., relative to specific steps recommended by the counsel in the estimate) and, without objection from the client, the counsel then performs the contemplated services, all such services are presumptively reasonable and necessary, as well as to be deemed pursuant to the client's direction. In an appropriate case, the client may pursue contribution to his or her fees and costs from the other party.

(6)DISPUTES. The counsel-client relationship is regulated by the Illinois Rules of Professional Conduct (Article VIII of the Illinois Supreme Court Rules), and any dispute shall be reviewed under the terms of such Rules.

Spelling out everything before you begin will give you the confidence and peace of mind to obtain a good result.

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<http://www.divorcesource.com/IL/pages/pfeinlaw.html>