

## RETAINER AGREEMENT

### 1. Names and Addresses of parties entering into agreement.

THIS AGREEMENT FOR LEGAL SERVICES by and between

(you, the Client), and

HERIBERTO A. CABRERA, ESQ.  
5615 5th Avenue, 2nd Floor  
Brooklyn, New York 11220

(the Firm)

constitutes a binding legal contract and should be reviewed carefully.

### 2. Preface

Commencing legal action or authorizing a law firm to act on your behalf with respect to your marital or family situation is a serious matter and should be undertaken only after serious consideration, substantial soul-searching, and full exploration of all alternatives. Professional marriage counseling or simply reopening direct lines of communication with your spouse may very well resolve many marital difficulties and result in a desired reconciliation. Premature legal action or engagement or attorneys can needlessly impede such conciliatory efforts.

### 3. Nature of the services to be rendered.

(a) This Retainer Agreement confirms that you have retained this Firm as your attorneys to represent you in negotiating an agreement with your husband, if that is reasonably possible; or, if not, to represent you in a matrimonial action.

(b) It is further understood that: (1) The retainer fee does not include any services rendered in Appellate Courts or any actions or proceedings other than the action for which this office has been retained: (2) With respect to the matter which is specified above, this Retainer Agreement and any sums paid to this 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 in your matter, unless extended by mutual agreement between us in writing.

(c) The Client authorizes the 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 the matter.

#### 4. 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 \$\_\_\_\_\_.00. If your matter remains uncontested, this amount will represent the total overall fee which you will incur by virtue of our services. Out-of-pocket disbursements such as court costs, telephone calls, etc. will be paid out of this initial retainer amount. However, in the event your uncontested matrimonial action requires the Firm to draft a written Stipulation of Settlement, you will be expected to pay an additional \$\_\_\_\_\_ to the Firm.

(b) In the event that your matrimonial action becomes contested, then this retainer payment does not necessarily represent the amount of the overall fee which you may incur by virtue of our services. In a contested action, you will be required to pay an additional retainer amount of \$2,500.00. The Firm will then bill its services on an hourly basis at the rate specified in Section 8(a) below. 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 proceeding, long distance telephone calls, telefaxes, process service fees, mileage, deposition and court transcripts, and excess postage which are incurred in your behalf.

(c) The client further understands that, if this matter becomes contested, 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 of or in connection with the Client's matter.

#### 5. Refund of advanced retainer

**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.**

(a) In the event that we obtain a disposition of your matrimonial matter, either by way of a settlement agreement (termed separation agreement or stipulation of settlement) or by judgment by the court of the issues involved in your case, the aforementioned retainer fee [or the sum of \$\_\_\_\_\_.00 for an uncontested matter, or \$1,400.00 for an uncontested matter that

requires the Firm to draft a written Stipulation of Settlement, or \$2,500.00 for a contested matter] shall also be the minimum fee charged to you, i.e., there will be no refund of the retainer fee [or the sum of \$\_\_\_\_\_.00 for an uncontested matter, or \$1,400.00 for an uncontested matter that requires the Firm to draft a written Stipulation of Settlement, or \$2,500.00 for a contested matter]. 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.

An example of how the minimum fee operates is as follows: If the Firm resolves the matter with the expenditure of only 4 hours of time by a partner, and 6 hours of time expended by an associate attorney, there would be no refund to the client even though the time charges add up to less than the minimum fee.

Notwithstanding the above, if the attorney-client relationship is terminated without your matter having been concluded, e.g., if you and your spouse were to reconcile and the action was discontinued, or if you were to discharge the Firm as your attorneys, or if the Firm were to withdraw its representation, a fair and reasonable fee would be determined in accordance with legally accepted standards. At present, 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 skill requisite to perform the legal services properly.
- ! The likelihood, if 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 Firm, by accepting retention as your attorney, is clearly precluded from representing the opposing party against you.

With regard to the charges which may be levied by such professionals, the same shall be your responsibility, either directly to such professionals or in reimbursement of this Firm.

(b) In order for us to properly protect your interests, and in light of our experience in matrimonial litigation, it is important that we select or at least consent to the experts being retained in your matter. Accordingly, you agree to procure our consent relative to the retention of any experts for your case.

**6. 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, if any, will be promptly refunded to you.

**7. 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) If your matrimonial action becomes contested, you agree to pay the Firm such additional fees and to reimburse the Firm for our advances on your behalf that may be due from time to time not later than ten (10) days from the date that we shall submit a bill to you for same. If an amount due to the Firm is not paid within 30 days after our statement to you of the amount due, interest at the rate of 12% 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 due to the Firm.

**8. 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 effect.**

(a) In a contested matrimonial action, the initial retainer fee shall be credited toward an hourly rate of \$250.00 per hour for time an attorney of the Firm expends and \$80.00 per hour for the time a Paralegal expands.

(b) In addition to the foregoing, your responsibility will include direct payment or reimbursement to this Firm 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, necessary secretarial overtime, transcripts and the customary fees of stenographers referable to examinations before trial in the event such examinations are utilized.

(c) 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 the Firm, in which event any modification of the hourly rates shall be rendered to writing and signed by you and the Firm.

**9. 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 such as a circumstances under which such fee may be incurred and how it will be calculated.**

**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.**

(a) The Firm acknowledges an obligation to provide the Client with copies of correspondence and legal documents relation to your case and will keep you apprised of its status.

**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 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 Firm from representation of the Client.

**12. Under what circumstances the attorney might seek to withdraw from the case for nonpayment of fees, and the attorney's right to see a charging lien from the court.**

(a) You are advised that if, after having paid to the Firm an initial retainer amount of \$\_\_\_\_\_.00, this matter becomes contested, and you are unable to pay the additional retainer amount specified on Paragraph 5(a) [i.e. \$2,500.00], the Firm will 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.

(b) In addition, you are advised that if, in the judgment of the Firm, we decide that there has been an irretrievable breakdown in the attorney-client relationship, or a material breach of the terms of this retainer agreement, the Firm 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 the 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.

(c) In the event that any bill from the Firm remains unpaid beyond a 30 day period, the Client agrees that the 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.

**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.**

(a) 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 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. Application for Fees**

(a) 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.

**15. Retention of Experts**

(a) You have been advised that in order for us to properly protect your interests, if this matter becomes contested, it may be necessary to retain outside experts such 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 requirements 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 you spouse pay al all

or part of the aforementioned fees for experts.

(b) In order for us to properly protect your interests, and in light of our experience in matrimonial litigation, it is important that we select or at least consent to the experts being retained in your matter. Accordingly, you agree to procure our consent relative to the retention of any experts for your case.

#### **16. Other Attorneys in Firm Rendering Services.**

(a) The client understands that no one particular member of the Firm is being retained but, rather, the Firm, as an entity, is undertaking legal representation of the client pursuant to this Retainer Agreement and that the Firm reserves the right to assign and delegate all aspects of such representation as the Firm, in its sole discretion, deems appropriate.

(b) Such assignment and delegation may include, but is not limited to, preparation or pleadings, motions, disclosure demands and responses, settlement negotiations, preparation of agreements, preparation and conduct of examinations before trial, court appearance, trial work, and any other matter deemed by the Firm to be appropriately delegated.

(c) 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.

#### **17. Acknowledgment and Understanding.**

(a) The client acknowledges that he or she has read this Retainer 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 Retainer 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.

#### **18. Certifications.**

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

**19. No guarantees.**

It is specifically acknowledged by you that the 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 the 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.

**20. Closing.**

You are aware of the hazards of litigation and acknowledge that the Firm has made no guarantees in the disposition of any phase of the matter for which you have retained this office.

You acknowledge that pursuant to court rule, a copy of this Retainer Agreement is required to be filed with the court in which your action is pending. You indicate your understanding and acceptance of the above by signing below where indicated.

Dated:

Client:

LawFirm:

I HAVE READ AND UNDERSTAND THE ABOVE.  
RECEIVED A COPY AND ACCEPT ALL OF ITS TERMS:

HERIBERTO A. CABRERA, ESQ.  
5615 Fifth Avenue  
Brooklyn, NY 11220

\_\_\_\_\_  
CLIENT'S NAME

by: \_\_\_\_\_  
HERIBERTO A. CABRERA, ESQ,



## ***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 fees 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 sign return the balance of the retainer to you, 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 the 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 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.

Dated:

Brooklyn, New York

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CLIENT'S NAME