

# Retainer Agreement to Draft Separation Agreement and Other Legal Documents Following Mediation

As your mediator, you have asked me to draft an Agreement, Separation Agreement, or Opting Out Agreement (hereinafter "Agreement"), a proposed Domestic Relations Order, and other legal documents (delete if not necessary). By engaging me to draft your Agreement and other legal documents, I would like to point out some of the risks and benefits of my service prior to drafting.

While you both understand that I am an attorney as well as a mediator, I will not be representing either of you individually in drafting your Agreement and other documents. Therefore, I cannot advise either of you about what is in your separate, individual best interests. Rather, my role will be to draft, in a neutral manner, legally enforceable documents under the laws of New York State based upon the terms you agreed upon and the information that you supplied.

Because there is a chance of a dispute over legal rights and entitlements, the law assumes that your individual interests are in conflict with one another. Any lawyer who tries to serve both of you is, therefore, presumed to have a conflict of interest. By agreeing to have me draft your Agreement and other legal documents, you are indicating your desire that I serve both of you in spite of any inherent or perceived conflict of interest and you hereby waive any conflict of interest. Your waiver of a conflict of interest means that, although you know that your interests are different from your spouse's or partner's interests, and you could each have separate attorneys participating in the actual drafting of your Agreement and other documents, you believe I can serve you both adequately and perform the duty of drafting the Agreement and other documents in such a manner that is acceptable to both of you.

Other factors are also considered important to protecting you when one lawyer drafts legal documents for two people with potentially conflicting interests. You must be fully comfortable and committed to the terms of your Agreement and other documents, and there can be no remaining contested issues between you.

Signing this Retainer Agreement is confirmation that you are comfortable and committed to the terms of your Agreement and any other documents, and there are no contested issues remaining. Also, you are acknowledging that you were informed that

you could each benefit from the assistance of an independent attorney to negotiate and draft the terms of your Agreement and other documents.

Although you have retained me to draft your Agreement and other documents, and waived any potential conflict of interest, I strongly recommend that you engage separate attorneys to review the proposed Agreement and other documents before you sign them. Separate attorneys will give you advice as to: 1) alternative legal options to the decisions made in the Agreement and other documents; 2) whether or not the Agreement and other documents meet your respective legitimate objectives; and 3) alternative ways to draft the Agreement and other documents in order to achieve more favorable terms.

You also need to know that the absence of independent legal counsel to review our proposed Agreement is a significant factor that is taken into account by a court when determining whether or not an Agreement was freely and fairly entered into. Having your own separate attorneys review the Agreement before you sign it substantially decreases the likelihood that the Agreement will be set aside later on if either of you challenges it as not having been entered into freely and fairly.

#### **Fees for Drafting and Filing the Agreement and Any Other Legal Documents:**

Before I write the Agreement, you agree to pay a drafting deposit of ten (10) times the hourly rate of \$\_\_\_\_, or the sum of \$\_\_\_\_\_. An additional deposit will be requested if this deposit is used up. Any unused portion of the deposit will be refunded to you.

The ten hour deposit is for the drafting of the Agreement and does not include the preparation of other legal documents such as deeds and court Orders to move retirement monies. A separate deposit may be requested if the Drafting Deposit for the Agreement is not likely to be sufficient to cover the time required to draft these additional documents. The amount of the additional deposit will be based on the time estimated by the mediator to complete the additional documents.

After you receive the first draft of the Agreement, there may be several additional drafts that contain your additions, deletions and other modifications to the previous draft. You will discuss and decide on modifications to the Agreement until you are mutually satisfied with its terms. The final Agreement will be provided to you, ready for your signatures, only upon the full payment of any balance due and owing.

The minimum amount of time that I bill for is 1/20 of an hour, or in three (3) minute

increments. Time spent on your Agreement (computed in units of 3 minutes) includes drafting, and phone calls, emails, and letters related to the drafting. This time will be charged against your deposit at your hourly rate.

In addition to the hourly fee, you are responsible for paying all out-of-pocket expenses which include but are not limited to the costs for filing papers, court fees, Federal Express and other overnight mailing services, photo-copying (beyond the nominal copies made throughout the process).

Any balances due for a period of thirty (30) days or more will incur an accumulative monthly charge of 1.25% of the balance due.

Please see the annexed Statement of Client's Rights and Responsibilities which is made part of this Agreement. If you understand and are in agreement with all of the above, please sign below to indicate your agreement and return the original to me with your deposit for the drafting of the Agreement. If you have any questions about this Retainer Agreement, please do not hesitate to contact me before signing. And, as always, in cooperation, Christine Hickey