

Creating The (Almost) Perfect Retainer Agreement (With Form)

by Lori A. Colbert

Lori A. Colbert,

an Associate with Mendel & Associates, in Anchorage, Alaska, focuses on family law. She has many years of trial experience in a range of family issues, including adoptions, divorce, child custody, child support, interstate custody, qualified domestic relations orders, and Indian Child Welfare Act cases. She is currently serving her fifth year as co-chair of the Family Law Section of the Alaska Bar Association and also serves on the Continuing Legal Education Committee and the Diversity Committee for the Family Law Section of the American Bar Association. She can be reached at lcolbert@mendelandassociates.com.

You need to know the client as well as the case.

EVERY ATTORNEY WANTS to create the perfect retainer agreement. Why? The perfect retainer, when it is enforced appropriately, solves the biggest management problem in our practices—having enough money to pay the client's bill each month. The perfect retainer should also help the client to plan what financial resources he or she will need to make it through the end of the divorce or custody litigation.

What is the perfect retainer agreement? The perfect agreement is one that adequately provides enough funds to cover the client's bill on a monthly basis. The best outcome would be an agreement in which the up-front retainer and the monthly payments completely cover the ultimate cost of the divorce.

How does one go about creating the perfect retainer agreement? There are a number of ways to do this. One way is to review some of your older cases that you had from start to finish. You should review a number of different scenarios: for example, a divorce with custody and property, a divorce with property and no custody, a custody case in which there has not been an initial determination of custody, a modification of custody because a parent is relocating, a modification of custody because one of the parents is behaving badly, and a modification of child support. Make sure that you run the gamut of the types of cases you typically handle. From your varying selection of cases find two to three cases that represent that specific type of case and figure out what the total cost of the case is and how long it took to complete the case. This information will allow you to determine what you need to receive up front as the initial retainer and what amount you need to receive for the monthly payments based upon your projected length of the case. For example, if a custody modification case took 10 months to complete and cost \$15,000, you may want to take a \$7,500 retainer and monthly payments of \$750 which would provide close to \$15,000 in less than one year's time.

The other important number in the retainer agreement is the hearing/trial deposit. The

characteristics of the case will help determine what kind of deposit is needed to prepare for an interim hearing and/or trial. Is the case one that will require a lot of document preparation versus witness preparation? Which one normally costs you more to prepare? Figure your preparation and actual court time, including that of your billing support staff to calculate your trial deposit. Ensure that the trial deposit covers the costs of preparing for trial and actually leaves you with funds to complete the trial. Too often, lawyers spend considerable time in preparation, and when the trial day comes, there is nothing in the bank to cover the actual court time.

It is very important that you have adequate information about the case prior to providing the potential client with a retainer agreement. Without sufficient information, you can be left with a wholly inadequate retainer for the divorce from hell.

RETAINER AGREEMENT

This Agreement constitutes a legal contract between you and this law firm, and you are encouraged to have it reviewed by your regular attorney or business advisor before entering into this engagement.

_____ has selected MENDEL & ASSOCIATES to represent him/her in connection with _____

MENDEL & ASSOCIATES' goal is to provide you with excellent legal services. While we cannot guarantee the outcome of any given case, we do strive to represent your interests vigorously and effectively.

COSTS AND FEES

Cost is an important consideration in any legal matter and we want you to understand the basis on which we provide legal representation and bill for services. Please review carefully the policies outlined below. If at any time you have questions or concerns about costs, or any element of your case, please do not hesitate to call our office.

Retainer. You have agreed to pay a retainer of \$_____ due on or before _____. If this retainer is not paid by this date, this retainer agreement is null and void.

In addition to your retainer, you are expected to make a monthly payment of \$_____ by the 5th of each month. Each month you will receive an itemized bill showing the work done on your case, the charges for that work, and the amount remaining in your trust account. If at any time the amount remaining in your account falls below \$_____, you will be required to make an additional deposit, or increase the amount of your monthly payments in an amount we will set. If at any time the amount in your trust account at the end of the month exceeds \$_____, you need not make a monthly payment in that month. Any amount remaining at the end of your case will be refunded to you.

Trial Or Final Hearing. If your case goes to trial or to a final hearing in a case that does not require a trial, you will need to have no less than \$_____ in your trust account 30 days before the scheduled trial or final hearing. This is absolutely necessary to ensure that we have the funds needed properly to prepare your case for trial. You will be notified immediately when the court sets a date for your trial, so that you can plan for this expense.

Rate. Fees will be billed at our regular hourly rates for attorneys and for paralegals. We use the

services of our experienced paralegals to assist with many aspects of your case. Currently the hourly rates for our attorneys range from \$225-\$300, and \$95 per hour for paralegals; however, we reserve the right to implement rate increases at our own discretion. You will receive written notice of any rate increase.

We try to keep your costs and fees as low as possible. One of the ways we do this is by using paralegals whose work is supervised by attorneys within the firm. Our use of paralegals is designed to keep your fees at a minimum. We do not employ secretaries. Whenever possible, clerical work such as copying, mailing, and faxing is assigned to clerical staff, for whose time you are not billed. If short deadlines or urgent matters require it, however, attorneys or paralegals may do these tasks. In that case, you will be billed for their time. In addition, your case will be assigned to an associate attorney who will be primarily responsible for work on your case, under supervision. This also will keep your costs down, and will assure you readier access to one of the attorneys.

Other Costs. In addition to our fees, there are some costs associated with litigation, for which you will also be responsible. These may include court filing fees, deposition costs, expert fees and expenses, investigation costs, long-distance telephone charges, messenger services fees, photocopying expenses, postage, and process server fees. These costs will be included in your monthly bill. When we foresee that costs on a matter may amount to a substantial sum, we may ask you to pay them directly or to fund them in advance. We will try to give you as much advance notice as possible of these requirements.

Billings: Each month you will receive an itemized statement of all charges, showing amounts paid and expended. Our statements are prepared and mailed at the beginning of the month following the month in which services are rendered. You may pay your bill by credit card, in person, or by calling to authorize a charge. You will be charged interest at 10 percent APR on any past due balance (this is a rate of .83 percent per month). If you do not make the payments agreed to in this agreement in any month, we reserve the right to withdraw from your case.

Please review your bill carefully every month. If you have questions, please call promptly. It is much easier to resolve billing disputes when they arise, rather than months later.

In litigated cases (lawsuits) it is difficult to tell in advance what the total fee will be. The total fee for services will be based on factors over which we will not have full control. We are sensitive to your budgetary concerns, however, and make every effort to give you as much information as we can as the case progresses. Please remember that cost estimates are only estimates, not a guarantee.

TERMS OF REPRESENTATION

CONTINUED REPRESENTATION IS DEPENDENT UPON REASONABLE COOPERATION AND PROMPT PAYMENT OF BILLS.

We reserve the right to withdraw from your case should it become apparent that our representation of your interests is impaired because of lack of cooperation on your part, such as refusal to follow our advice, or refusal to provide us with information we feel is necessary.

In addition, we may withdraw at any time that you fail to make your monthly payment, or to make required additional deposits against future fees. If you are having difficulty paying your bill, please contact us and we will try to make suitable arrangements. However, you cannot expect that we will