

Memorandum in Support of proposed amendment to the Statement of Client’s Rights and Responsibilities in a Domestic Relations Matter

FAMILY LAW SECTION

FLS # 6

August 8, 2018

The Administrative Board of the Courts has requested comment on a proposed amendment to the Statement of Client’s Rights and Responsibilities (SCR&R) in a Domestic Relations Matter required to be provided pursuant to section 1400.2 of the Rules of the Appellate Division. A copy of the proposed amendment can be found at the following link: www.nycourts.gov/rules/comments/PDF/Part125.pdf

THE FAMILY LAW SECTION SUPPORTS THESE RULE CHANGES

The proposed amendment includes various additions to the SCR&R, the below list not being exhaustive:

- Language providing that clients “are responsible” for communicating “honestly, civilly and respectfully” with their attorneys.
- Language requiring clients to read the retainer agreement before signing it – along with asking the attorney any questions about the retainer agreement.
- Language reminding the client that the retainer deposit may not be sufficient to cover all the time that the attorney spends on his or her case.
- Language explaining that, if the client’s conduct is found to be frivolous or meant to intentionally delay the case, he or she could be sanctioned.
- Language informing the client that his or her attorney has the right to send written communications to the client if the attorney disagrees with how the client wants his or her case handled.
- Language informing the client that in some cases, the attorney may seek a retaining lien on the file as a security.
- Language explaining that even if the Court orders the other party to pay the client’s fees, if the other party fails to do so, then the client is still responsible for the fees owed to the attorney and any experts.

- Language stating that if the client expects the attorney to prepare and file documents related to the transfer of title (e.g., house, cooperative apartment), then the retainer agreement must specify same. The proposed amendment also reminds the client that an agreement or court order directing the transfer of title does not, in fact, constitute a transfer of title for a house or cooperative apartment.

The proposed amendment is useful and productive. While the SCR&R may appear to be *pro forma*, its materiality in matrimonial matters should not be understated. The amendment serves the twofold purpose of (1) further educating clients to a greater degree regarding their rights and responsibilities while a case is pending, and (2) reminding counsel of the importance of understanding the client's expectations from the outset, and ensuring that the retainer agreement reflects such understanding accordingly.

Based upon the foregoing, the Family Law Section **SUPPORTS** the proposed amendment of rules relating to the SCR&R.