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**RETAINER AGREEMENT ADDENDUM**

REVISION AS OF SEPTEMBER 1, 2018

**OUR HOURLY RATES**

We have used the same Retainer Agreement documents since about 1998 so that clients do not have to read all the Retainer Agreement documents each time they retain the firm for a new legal matter. However, to, amongst other things, advise clients of our current rates and fees, this Retainer Agreement Addendum is used.

***The rates in this Retainer Agreement Addendum will apply to all prior Retainer Agreements you have already signed (unless the prior Retainer Agreement or an addendum to it has a higher rate than set forth in this Retainer Agreement Addendum) and any Retainer Agreement that you will sign in the future as follows:*** The rates that will apply, subject to the exception for a higher rate in any prior Retainer Agreement, to your Retainer Agreement, and for which you will be billed for attorneys' time, which is \$260 per hour, and for paralegals' time, which is \$230 per hour, will vary as determined by the firm depending on who is doing the work and what type of work is being done, but the rates for attorneys will not be higher than \$260 per hour and rates for paralegals will not be higher than \$230 per hour, ***unless*** a lower or higher rate for attorneys and paralegals is specifically set forth after the date of this Addendum (1) in that portion of your Retainer Agreement entitled "AMOUNT OF RETAINER" or "SCOPE OF LEGAL SERVICE TO BE PROVIDED", or (2) in a letter from the firm, dated after the date of this Addendum, referencing this Addendum as part of the letter.

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**FEE CHARGES, FILE RETENTION, CLIENT CALLS, MEETINGS, EMAILS & RETAINER POLICY**

**MESSENGER FEE:** Our Messenger Fee is \$25 per pick-up or delivery.

**ONLINE LEGAL RESEARCH FEE:** Our Lexis Nexis online legal research database access fee is \$85 per month. This fee is only charged for each month during which we need to conduct research through Lexis Nexis.<sup>1</sup>

**DIGITAL DOCUMENT PROCESSING FEE:** We are a digital law firm. Our Digital Document Processing Fee is \$0.65 per side of a page. Client research and documents are maintained in digital form and are available to our legal staff on screen. This is the fee charged to scan a document into our scanned document database. Unless there is an unusually large printing project, we do not charge for printing digitized legal documents for our clients, for court cases or for other work.

**EMAIL FEE:** Since emails, sent or received, are legal documents, and, therefore, must be reviewed, processed, preserved, and entered into time sheets when appropriate, a minimum fee for one quarter (0.25) hour (i.e., fifteen minutes) will be charged for every email received or sent. We recommend the use of emails by you only to forward documents and information and not to request legal advice or case status. Emails from us providing legal advice and case status are time consuming and expensive, and often require research, file analysis and a review process which increases the client's legal fees. Therefore, it is not advisable to use emails to request legal advice or case status and to call if you need such information.

**PHONE CALL FEE:** Since all phone calls with a client and others pertaining to the client are important and are part of the representation of the client, information about such calls must be maintained and entered into time sheets when

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<sup>1</sup>When computerized research is utilized for your matter, a flat fee is charged monthly for Lexis Nexis online legal research access time, regardless of the amount of time spent during that month on your behalf to access such online legal research database. Although some firms may charge their clients a minute or hourly rate for such access, this firm does not. This, of course, does not include the professional's time to do the research, which may be billed separately.

appropriate and a minimum fee for one quarter (0.25) hour (i.e., fifteen minutes) will be charged for every such call.

PHONE CALLS TO CLIENT: Because we do not know who has access to your telephone and messages left, we will not usually leave a message about your legal matter. We will only leave a message stating who called and requesting a call back.

DESTRUCTION OF FILES<sup>2</sup>: At the conclusion of your matter, we reserve the right to destroy your files after three (3) years, unless you have notified us in writing (the receipt of which was acknowledged by the firm), that you wish to take possession of them. We reserve the right to charge administrative fees and costs associated with researching, retrieving, copying and delivering files you have requested to be returned. You hereby consent to the destruction of your files at any time after said three (3) years as provided in this paragraph without further notice to you.

RETURN OF FILES: The firm reserves the right, but not the obligation, at any time to (1) send to you at your last known address all or any part of your files by US Mail, United Parcel Service or Federal Express or any other overnight delivery service, or (2) email to you at your last known email address notice that your files will be destroyed after ten (10) days from the date of the notice unless we are contacted by you in writing (the receipt of which was acknowledged by the firm) that you want to take possession of them and will do so within ten (10) days from the date of your letter. You agree to keep us updated with your current mailing address and email address. If files are shipped by US Mail, United Parcel Service or Federal Express or any other overnight delivery service to your last known address, you agree that we are not responsible for what happens to the sent files, and you agree that these files may be destroyed if they are returned to us. You also agree that, if notice of proposed destruction was sent to you and you did not contact us in writing (the receipt of which was acknowledged by the firm) that you want to take possession of the files, these files may be destroyed after the ten (10) day period referenced above.

CLIENT CONFERENCES: In order to work efficiently on your legal matter, we have established a policy to meet with a client pertaining to the client's legal matter with two (2) staff members, e.g., the lead attorney and his or her assistant, or a staff member to whom the matter is assigned and his or her assistant. We have determined that time otherwise chargeable to the client can be saved by this policy because, when a person without an assistant has a discussion with a client, that person has to pause the conversation to take notes and clarify them and, once that is done, to re-engage the client in conversation, each time hoping that his or her train of thought or important and/or critical issues have not been lost or disrupted during the starting and stopping of the note taking. We have determined that when one person meets with a client to discuss the legal matter, who also takes notes, it will usually take more than twice the time it would have taken if that person had an assistant during the meeting taking notes. This time period becomes greater by 50% or more because that interviewer, in most cases, has to then meet with his or her assistant to update the assistant on the meeting and advise the assistant what to do for the client, all of which would be unnecessary if the assistant was present during the conversation with the client.

CHARGE FOR FIRST MEETING: Generally, we do not charge for the first meeting with a potential client if we are not retained; however, if we are retained during the first meeting, we will charge for our time because we will be utilizing the information obtained during that meeting to work on the client's legal matter.

PAYMENT OF FULL RETAINER: If the full retainer is not paid, we reserve the right to not start work and, if we started the work, we reserve the right to stop our work until the full retainer has been paid.

UNUSED RETAINER: Any retainer(s), and funds held in trust or escrow, that have not been used at the time of the completion of work on the matter related to the retainer, trust or escrow, or upon the termination of the attorney/client relationship, will be applied, without your further consent, to any other legal matters and disbursements we are or were handling for you, and any balance will be returned to you as provided in this Addendum.

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<sup>2</sup>When files are to be destroyed as set forth in this Addendum, the time after the closing of your case when legally or ethically we can destroy your files may be longer than provided in this Retainer Agreement Addendum, in which case, the time provided in this Addendum will be extended as required by the then applicable existing legal or ethical standards if we are required to comply with such standards notwithstanding this Addendum.

RESULTS OF LEGAL WORK: The firm cannot make any promises or guarantees that a certain outcome will be obtained. If there were discussions about our prior case results, or if you are aware of our prior results, please be advised that *prior results do not guarantee a similar outcome*.

FEE ARBITRATION: If a dispute arises concerning fees charged by the firm, either the firm or the client may seek fee arbitration with the Monroe County Bar Association Fee Arbitration Program.

NYS DEPARTMENT OF MOTOR VEHICLES CONSENT TO RELEASE OF PERSONAL INFORMATION AND MOTOR VEHICLE RECORDS: By signing below you authorize the release to Dibble & Miller, P.C. upon request to DMV of all your DMV records, including all records about your vehicles and driving record, and “personal information” as provided in United States Code, 18 USC §2721 et. seq., and “motor vehicle record” as defined in 18 USC §2725.

ADVANCED PAYMENT RETAINERS: The Retainer Agreement signed by all clients is an “Advance Payment Retainer” (i.e., all retainer funds paid to the firm, either at the time of initial representation or thereafter, are an advance payment of legal fees to be utilized by the firm for the client’s benefit during representation).

Any retainer fees paid to the firm pursuant to the Retainer Agreement shall be placed directly into the firm’s operating account (instead of a client trust or escrow account), thereby immediately becoming the property of the firm. In other words, upon deposit into the firm’s operating account, the retainer fees provided to the firm shall no longer be the property of the client, and, if they are deposited into an interest earning account, any interest earned on such deposits shall become property of the firm. This is a procedure that the firm has used since its inception.

The advanced payment of retainer shall be listed as a “credit” on the client’s bill, and the fees for time spent, and disbursements incurred, by the firm on the client’s matter(s) shall reduce this credit amount and the retainer. To the extent that there is a credit at the end of the firm’s representation of the client, the firm shall promptly pay an amount of money to the client equal to the credit by the end of the following month after the month during which completion of the representation occurred. This will allow the firm time to determine fees for time expended and disbursements incurred during the representation and time to prepare the bill.

The benefit to the client of an “Advance Payment Retainer” is that the retainer fees will likely be protected from third parties which may make a claim to said funds (e.g., this likely prevents any creditor of the client from taking the retainer to pay the amount owed by the client to the creditor), thereby allowing the client to retain the firm to represent the client. While the client has the option to have the retainer funds placed into a client escrow account to be billed against as services are rendered by the firm (i.e., commonly referred to as a “security retainer”), the firm does not use such retainers because such retainer funds, which remain the property of the client until billed against by the firm, could be seized by third parties, thereby depriving the client of the ability to retain the firm and/or have the firm continue to work on the client’s behalf.

**Reviewed, Understood, Agreed to and Accepted:**

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Print Name

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Signature

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Date

*As always, thank you for choosing Dibble & Miller, P.C. for your legal needs.*