



FAMILY LAW SEPARATION

TERMS & CONDITIONS



2013-2014

DOROTHY J. WALSH & COMPANY, SOLICITORS

20, Fair Street, Drogheda, Co. Louth

Tel: 041-9807404

Fax: 041-9830034

TERMS OF ENGAGEMENT FAMILY LAW LEGAL SEPARATION

THE PURPOSE OF THIS LETTER IS to you to explain the procedures involved in the progress of the family law matter and how I will work on your behalf and also to advise you in connection with the charging basis.

I will also take this opportunity to thank you for your instructions in relation to the above matter. We are pleased to act for you. As discussed, I am obliged at the outset of any family law matter to advise you of your options in relating to separating, in particular to reconciliation, mediation, negotiation of a separation agreement between Solicitors, or by way of a last resort a court order for judicial separation.

Separation Agreement

One option is to resolve matters by means of a negotiated separation agreement between Solicitors which would lead to the resolution of all matters pertaining to issues such as property, maintenance, and succession rights.

Our estimated fee for a Separation Agreement, in the event of matters proceeding smoothly, would be in the region of €2,000.00 to €3,000 plus V.A.T and any applicable outlay.

This type of Agreement would regulate how you and your estranged spouse will live apart. This type of Agreement is used instead of applying to the Court for an Order for Judicial Separation. It is not as final as an order for divorce and does not enable you to re-marry.

Judicial Separation / Divorce and Relief through the Courts

An application for a Judicial Separation must be based on one of the following six grounds:

- One party has committed adultery
- One party has behaved in such a way that it would be unreasonable to expect the other spouse to continue to live with them
- One party has deserted the other for at least one year at the time of the application
- The parties have lived apart from one another for one year up to the time of the application and both parties agree to the decree being granted
- The parties have lived apart from one another for at least three years at the time of the application for the decree (whether or not both parties agree to the decree being granted)
- The court considers that a normal marital relationship has not existed between the spouses for at least one year before the date of the application for the decree.

The last is by far the most common ground on which the decree is granted, as neither party has to be shown as being at fault. A Judicial Separation Order does not leave either of you free to re-marry but rather governs how you will live apart.

Once Court proceedings issue each party must disclose their means (i.e. income, assets, debts, expenditure etc.) and this statement of means must be backed up by way of vouching documentation. The Court also has wide powers to order disclosure or discovery of documentation if appropriate and these issues and the matters in dispute are assessed through a series of case progression hearings with the Court Registrar.

In addition the Court has power at the outset to make a wide range of Orders for interim reliefs in relation to matters such as maintenance, access, and domestic violence and if the circumstances require such emergency relief can be sought.

At this stage, it is important to point out that just because Court proceedings issue, this does not mean that the matter must run to a full hearing. Quite often cases are settled and the terms then ruled before a Judge on consent. This is always our preferred route.

However whether on settlement terms or a full hearing before the court will make an Order for judicial separation, the Judge must be satisfied that:

- The grounds for the application exist.
- The couple has been advised about counselling and mediation.
- Proper provision has been made for the welfare of any dependents
- If it is satisfied, the court will grant a Decree of Judicial Separation. The Decree confirms that the couple is no longer obliged to live together as a married couple.

As part of the Order for Judicial Separation the power to make a wide range of orders in relation to custody and access to children, the payment of maintenance and lump sums, the transfer of property, the division of assets, the extinguishment of succession rights, as well as other matters.

Certain matters can only be varied by having recourse to the Courts such as pensions and for this reason even if matters can be agreed through negotiations those terms can be ruled on consent in Court in order to obtain a Court Order rather than in a Separation Agreement if the parties prefer. You cannot enter into a Separation Agreement and apply through the Courts for relief by way of an Order for Judicial Separation, both processes are distinct remedies.

As you may be aware if your case can be settled without protracted correspondence and negotiations the fee will be considerably less than if your case proceeds to a court hearing or is settled only shortly in advance of a court hearing date.

In order to obtain a Court Order for divorce, you must be separated for four out of the five preceding five years

If matters cannot be agreed by negotiations, there will be no option but to proceed with the court proceedings and progress the case to have the matter heard by a Judge to determine issues. In order to protect your rights in this matter I generally try to set the matter down for trial as early as is, if these circumstances arise. You will appreciate it is not possible at this stage to estimate precisely what work will be involved in the case and if for example applications for interim relief, discovery etc will be necessary and as such it is not possible for me to give you a precise fee estimate of the work that may be involved to bring the matter to a conclusion.

Legal Costs of obtaining an Order for Judicial Separation

The Solicitors (Amendment) Act, 1994, requires me to provide you with particulars in writing of the basis upon which my charges will be made to you. From the foregone explanation of the procedure involved, you will probably realise that it is very difficult for me to predict in advance what such charges will be at this stage of the matter as we cannot tell if court proceedings will ultimately prove necessary or appropriate to the resolution of the

matter. As a very loose rule of thumb, you may take it that the costs of a Circuit Court Action would amount in the region of €4,500 to €12,000, together with V.A.T. and any associated outlays such as barristers fees. This would be in the event that the matter progresses in a straight forward manner and that urgent preliminary or interim relief applications are not required or other matters that may cause the matter to become protracted such as considerable amounts of discovery. As such the professional fees varies from case to case depending upon the professional work involved in bringing the matter to a conclusion and in a strongly contested case with protracted court applications fees can rise to in excess of this sum may be in the region of €20,000 or higher. If your case seems to be progressing in this manner we will advise you as the matter arise. We will endeavour at all stages to conduct your case in the most cost efficient manner possible and we will for instance advise you when there are tasks that you could undertake yourself to avoid you incurring unnecessary or additional legal costs.

Charges include my fees, outlays, disbursements, expenses and V.A.T. I may have to engage as your agent, barristers, and other professional persons. All of these will obviously require to be paid and payment or agreement of payment will occur as the case progresses and usually I will write out to you requesting the amounts to be paid or agreement thereof.

My own Solicitor's charges will be measured having regard to the scale, labour and responsibility involved in the claim and any specialised knowledge given or applied on my part. I will also take into account, the complexity, difficulty, severity and urgency of the question and the importance of the matter. Finally, my fee will reflect the time reasonably spent by me on the matter, and the places where in the circumstances under which the claim is pursued. My fees will also be subject to a charge of V.A.T. which at the current rate is 23%.

When the matter is concluded, I will present you with a detailed statement and bill of costs setting out all monies in connection with the matter including our own fees. You are, of course, entitled to query this statement of costs and indeed to have the costs reviewed by the court officer known as the Taxing Master. If this arises, I am obliged to give you the necessary details in connection with the review procedure.

In family law matters, it is generally ordered that each party to the proceedings bears their own costs.

Fees, Terms & Conditions:

As you can appreciate it is often very difficult to accurately predict the level of work that may be involved in a particular matter and in this respect an estimate is not to be construed as a commitment by the firm to render legal advice and services at a minimum or maximum cost.

If:

- (a) matters become more complex
- (b) if your instructions or your position regarding the aforementioned change materially; or
- (c) where a matter requires urgent attention, involves substantial periods of work outside normal business hours; or
- (d) if negotiations or documentations (where applicable) become protracted or difficult.

The time spent on the matter will obviously increase and so therefore will the ultimate fee.

When commencing work of this nature it is the policy of our firm to request on account funding, which we will put against fees generated (plus Vat and outlay) by us in carrying out the initial work on the file. In the present circumstances, we would estimate that a reasonable amount for on account funding would be €3,000.

We reserve our right to raise further invoices for payment on account as the matter progresses. These payments on account will then appear as deductions on your final fee note and any over payment will of course be refunded to you.

Indeed some of our clients prefer to make payments on account quarterly in family law matters rather than to have one large fee note at the end of the transaction, if you wish to proceed in this manner please feel free to discuss this with us further.

When a fee is raised, normally on a monthly or interim basis, we would expect the firm to be paid within 30 days. We may charge interest on unpaid bills and we will do so at the rate payable in judgement debts (8%), from one month after delivery of our bill.

Transfer of Property

You should note that charges for work necessitated by the Transfer of property will be in addition for charges of family law work. In addition, if individual court applications such as safety orders, access applications, or maintenance applications for example are necessitated such work will be billed separately and at the time of the application.

Instructing your solicitor

It is important that you give us clear and accurate instructions from the very beginning and when you get any new information as the case develops. We will do our best to carry out the agreed instructions and to give you a confidential and friendly service.

When we receive your instructions, we will explain your legal options to you. If there is anything you do not understand, please tell us right away so that we can answer your questions. We will then agree with you the actions to be taken.

Updating your instructions

We may need to update your instructions from time to time, for example, if:

- New issues or information arise,
- Events take an unexpected turn,
- We need more information from you, or
- Fees or expenses have not been paid.

It is important that you give us instructions when they are needed. If you fail to do this, we cannot make progress. This may affect the outcome and, in some cases, may mean we have no choice but to stop acting for you.

Acting on your behalf

When you give us instructions, we assume that you are giving us permission to take various actions on your behalf. For instance, our role as your solicitor may involve:

- Making a repayment to a bank or building society for you,
- Holding information for our records, including 'sensitive data', such as your Personal Public Service (PPS) number or medical reports,
- Employing barristers and other experts, such as doctors and engineers, on your behalf,

- Obtaining information from third parties to help us with your case, without seeking your permission in advance, and
- Using information technology (IT), including email, to guarantee the best quality and most efficient service.

Important:

- If you instruct us to repay money on your behalf, you cannot change these instructions later, if we have given a professional promise to others to do so.
- We will hold any money we receive on your behalf strictly in line with the *Solicitors' Accounts Regulations*.
- We will only use any personal or 'sensitive' information to help your case.
- We will only employ experts with your permission. We will select professionals who we believe to be competent, but we are not responsible for the negligence of anyone we employ on your behalf.

Disclaimer

In order to be able to advise and render legal services in relation to any particular matter, full and accurate disclosure of all facts that may be relevant to the matter or that may otherwise be requested by us is required and also appraisal of developments relating to that particular matter. Without limitation to the foregoing we will not be responsible for any advice given or services rendered in relation to documentation, information, or transactions which are not properly brought to our attention.

We disclaim to the maximum extent permitted by law any indirect, special, incidental, consequential loss or damages, of any kind including without limitations, loss or anticipated profits, goodwill or reputation. In relation to a particular matter, either at the outset or during the course of the matter, expressions of opinion or belief is intended to be an expression of opinion or belief only, based on information available at the time of such statement, and it is not to be construed by you as a promise or guarantee of any particular result.

Our liability (and that of our present and former partners and employees) to you arising out of, or in connection with, our engagement (whether for breach of contract or a statutory duty, negligence or otherwise) will be limited to the higher of (a) the minimum amount of the Professional Indemnity Insurance cover from time to time required by us to be maintained by us under applicable law or (b) one million euro. Nothing in this letter shall limit our liability to you (a) for fraud or fraudulent concealment or (b) to the extent that under any applicable law liability may not be limited.

Conflict of Interest

If at any stage there should be a conflict of interest we will make you aware of this immediately and provide all assistance in obtaining alternative legal advisors with the understanding that any fees incurred up to that point in relation to the matter out of which the conflict arises shall be reimbursed.

Legal requirements

As solicitors, we are required under the Criminal Justice Act 1994 to obtain identification documents in relation to our client. The obligations imposed by this Legislation are designed to prevent and detect money laundering.

Under anti-money laundering regulations, we need to be sure of your identity and source of assets before we can take on your case.

- **Identity** – you will need to give us evidence of your identity, such as your driving licence or passport, even if we already know you. We will also need you to give us a document showing your permanent address, for example an ESB or telephone bill or a bank statement.
- **Source of assets** – any funds or property that you ask us to deal with must have been legally obtained. If we become aware or suspect that these assets come from an illegal source, we must notify the Gardaí and the Revenue Commissioners without telling you, except in limited circumstances. We will immediately stop acting for you if we have to report illegal assets.

Even when we are not obliged to report to the authorities, we cannot transfer any assets or property funded by the proceeds of crime. This includes funds that have not been declared for tax purposes or that have been obtained by false means. In this situation, you would have to legalise your position before we could act on your behalf.

Obtaining your file

Once you pay us for our services, and provided that we have done everything we promised to do, you can take your original file. We are entitled to copy this file to comply with solicitors' regulations. Usually we keep a client's file for at least six years and then destroy it. However, we never destroy deeds and wills.

If you need your file or information from the file, we can send this to you. We will charge you a fee for this service, based on the current rates at the time of your request.

Making a complaint

Good communication between us will guarantee the best possible outcome. If you wish to make a complaint about any aspect of our service, however, please send it in writing to us and we will review your file without delay. We will then send you a written reply to any requests for information, advising you of any actions that we will be taking in relation to your case.

Transferring to another solicitor

We hope to reach a successful result on your behalf. But if you decide for any reason to transfer to another solicitor's firm, we will require payment for any work done up to that point.

Professional insurance

We confirm that we have the appropriate level of professional insurance in place, as required by law.

Acceptance of the Terms

If the above terms are acceptable to you, please indicate this by returning signed the enclosed Authority confirming acceptance of these terms. Our engagement will take effect on receipt of your acceptance.

Housekeeping:

- **When appointments are made with me it may be necessary due to urgent or emergency Court Applications to re-schedule your appointment. We have no control over such circumstances and strive where at all possible to minimise the inconvenience to you.**
- **Our Office hours are 9.30am to 5.00pm Monday to Friday with lunch from 1 – 2pm daily.**
- **We ask that all calls are directed to the office number 041-9807404. We return phone calls at a scheduled time every day (except where a call is urgent and needs to be dealt with immediately). We do ask that the mobile number is not used except in absolute emergencies as it is a private mobile**
- **Where you are leaving a message for your Solicitor we do ask that you leave as detailed a message as possible with reception or email in your message.**
- **We do not accept instructions via text messages.**
- **Text messages and emails are treated the same in terms of billing.**

Requirements to progress your case

We will prepare your Affidavit of Means with a view to exchanging Affidavits and seeing what progress can be made.

In order to come on record, I will require from you the following:

1. Photo Identification (received);
2. Utility bill;
3. Original State Marriage Certificate;
4. Written marital history;
5. Returned signed authority;
6. Retainer on account.

I hope this information is of benefit to you. If you have any queries on it please do not hesitate to contact me.

I look forward to hearing from you.

Best regards.

Yours sincerely

DOROTHY J. WALSH & COMPANY

I,

of
acknowledge receipt of the letter dated _____ from Dorothy J
Walsh and Co Solicitors setting out the terms of engagement and fee structure.

I hereby instruct Dorothy J Walsh and Co Solicitors to act on my behalf in my Family law
matter.

Signed: _____

Dated: