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FAMILY LAW – DIVORCE & JUDICIAL SEPARATION

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TERMS AND CONDITIONS

DOROTHY J. WALSH & COMPANY, SOLICITORS

The Mill Enterprise Centre, Drogheda, County Louth.

Tel: 041-9807404

**TERMS OF ENGAGEMENT**

**FAMILY LAW DIVORCE**

**THE PURPOSE OF THIS LETTER IS** to explain to you 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. I am 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 relation 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 Divorce.

**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. This type of Agreement regulates 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**.

Our estimated fee for work in this regard, in the event of matters proceeding smoothly, would be in the region of €2,500.00 to €3,500.00 plus VAT and any applicable outlay.

**Judicial Separation/Divorce and Relief through the Courts**

As you are aware from our discussions to date regarding the progression of the case, 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.

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.

In order to obtain a Curt Order for divorce, you must be separated for four out of five preceding five years. If your estranged spouse agrees regarding the time frame that you have both been separated it would appear you are eligible to apply for a divorce at this stage. If the time frame is disputed or cannot be proved you can apply for an order for judicial separation.

If matters cannot be agreed by negotiations, there will be no option but to proceed with court proceedings for a court order for judicial separation or divorce, and it will be necessary to have the matter heard by a Judge to determine issues. In order to protect your rights in this matter I generally try to issue proceedings and set the matter down for trial as early as possible, 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.

**Legal Costs of a Separation or Divorce**

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 cases of a Circuit Court Action would amount in the region of €4,500.00 to €12,000.00 together with VAT and any associated outlays such as barristers fees. Obviously, this varies from case to case and with 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. If your case seems to be proceeding in this manner we will advise you as the matter progresses.

Charges include my fees, outlays, disbursements, expenses, and VAT. 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 VAT which at the current rate is 23%.

I refer to the above matter and confirm that as the client, you are responsible for the discharge of your legal fees. All work done by this firm or others on your behalf will incur a charge. At the date of this Notice, it is not reasonably practicable for us to inform you of the legal costs that will apply. While we do not know the exact legal costs at this time, we do know how we calculate the legal costs that we will charge.

1. As we wish you to be informed about our charges, we set out the basis on which our legal costs will be calculated. This is as follows:-

a) Partner/Solicitor charges are at a rate of €350.00 - €500.00 per hour.

b) Legal Executive charges are at a rate of €100.00 - €150.00 per hour.

c) Administrative support charges at a rate of € 50.00 - € 75.00 per hour

2. The amount of value added tax to be charged in respect of the above amounts is at the date of this Notice at a rate of 23%. The value added tax rate may change between the date of this Notice and the date of issue of our Notice.

3. The above charges have been calculated by reference to the following matters:-

a) the complexity and novelty of the issues involved in the legal work;

b) the skill or specialised knowledge relevant to the matter which the legal practitioner has applied to the matter;

c) the time and labour that the legal practitioner has reasonably expended on the matter;

d) the urgency attached to the matter by the client and whether this requires or required the legal practitioner to give priority to that matter over other matters;

e) the place and circumstances in which the matter was transacted;

f) the number, importance and complexity of the documents that the legal practitioner was required to draft, prepare or examine;

g) where money, property or an interest in property is involved, the amount of the money, or the value of the property or the interest in the property concerned;

h) whether or not there is an agreement to limit the liability of the legal practitioner pursuant to s. 48 of the LSRA (limitation of legal practitioner’s liability by contract);

i) whether or not the legal practitioner necessarily undertook research or investigative work and, if so, the timescale within which such work was required to be completed;

J) the use and costs of expert witnesses or other expertise engaged by the legal practitioner and whether such costs were necessary and reasonable

4. If we become aware of an issue that means that the legal costs in your case likely to be incurred will be significantly greater than what is disclosed or indicated in this notice, we will, as soon as may be after we become aware of that factor, provide you with a new notice.

5. This case, as you are aware, required us to retain the services of a barrister and you will see in his attached letter he sets out an estimate in relation to his fees.

6. You are primarily responsible for the legal costs we incur on your behalf.

Taking all of the foregoing into consideration Louise I would estimate fees as follows:-

Professional fee:-

A. Where consent Divorce / Judicial Separation proceedings have been issued on your behalf and that all Terms are agreed and no issues have to go before the Judge for determination other than the ruling of the Consent Terms, the professional fee would range from €3,750.00- €5,000.00 plus vat at 23%.

B. Where Divorce / Judicial Separation proceedings have been issued on your behalf and the issue of maintenance/proper provision is not agreed but your case settles shortly in advance of a court hearing or on the actual day of the hearing, the professional fee would be €7,500.00 - €9,000.00 plus vat at 23%.

C. Where Divorce / Judicial Separation proceedings have been issued on your behalf and the matter goes to Case Progression Hearing and there is an actual court hearing date and the matter goes to full hearing where you the Applicant and the Respondent together with any witnesses on your behalf must give evidence, the professional fee on the basis of a one day hearing would be €9,000.00 to €11,000.00 plus vat at 23%.

D. In the event that the matter proceeding per paragraph B & C on a contested basis and it being necessary to instruct Counsel in the matter, I would at that stage request a Section 150 Notice regarding fees from counsel but I would estimate same to be in the region of €2,500.00 - €3,000.00 plus vat at 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 bear 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:

1. matters become more complex
2. if your instructions or your position regarding the aforementioned change materially; or
3. where a matter requires urgent attention, involves substantial periods of work outside normal business hours; or
4. 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 fees.

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 €3,000.00.

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 overpayment 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 judgment 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 for 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 bee 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 extend permitted by law any indirect, special, incidental, consequential loss or damages, or 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 limited 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 clients. 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 Gardai 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**

I the above terms are acceptable to you, please indicate this by writing to us 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 at 9.30 a.m. to 5 p.m. Monday to Friday with lunch from 1-2p.m. 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 Dorothy we do ask that you leave as detailed a message as possible in your email or voice message.**
* **We do not accept instructions via text messages or via emails.**
* **Text messages and emails are treated the same in terms of billing.**

**Requirements to progress your case**

We may need to look at issuing Court proceedings. In order that we can do this, I will require from you the following:

1. Photo Identification (received);
2. Utility Bill (received);
3. Original Statement Marriage Certificate;
4. Written marital history;
5. Retainer on account.

**DOROTHY J. WALSH & COMPANY**