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SUPREME COURT ADOPTS SERIES OF CHANGES IN COURT RULES COVERING MATRIMONIAL CASES

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The Supreme Court announced today that it has adopted a series of changes in Court rules relating to matrimonial law practice, including banning matrimonial attorneys from taking a mortgage on a client's home as a condition to representing the client. The Court also adopted a Statement of Client Rights and Responsibilities in matrimonial cases that is to be attached to all fee-retainer agreements between clients and attorneys.

The changes were made in response to recommendations submitted to the Court in February 1998 by its Special Committee on Matrimonial Litigation. The special committee was charged with examining all aspects of matrimonial practice, from the manner in which such cases are handled by attorneys to the manner in which they are managed by the court system. As part of its work, the special committee was asked to study attorney fee practices in matrimonial matters. After the special committee submitted its report, the Court invited public comment on the proposals.

Under the state Constitution, the Court governs the administration of the judicial system and regulates the practice of law, including matters related to legal fees. The special committee dealt with such matters, as opposed to the actual substantive law of divorce, which is determined by the Legislature.

All changes to Court rules are effective April 5, 1999.

Among the other changes adopted by the Court in light of the recommendations of the Special Committee on Matrimonial Litigation are rules and policies:

- Requiring that fee-retainer agreements specifically cover such areas as the method by which the fee will be computed, the hourly rate for the attorney, what legal services are being provided, and when the client is to make payment.
- Setting forth the factors to govern the award of counsel fees in matrimonial matters, including the financial circumstances of the parties; the reasonableness and good faith of the positions advanced by the parties; and the amount of fees previously paid to counsel by each party.
- Prohibiting nonrefundable retainers.
- Authorizing the judge to direct the parties to sell or mortgage marital assets so that an economically disadvantaged spouse will have access to sufficient funds to pay for the litigation.
- Authorizing the judge to permit a lawyer to withdraw from representing a client if the client does not follow the terms of the retainer agreement.
- Requiring the parties to list all life, health, automobile and homeowners insurance they have and to maintain such coverage unless the judge orders otherwise.
- Establishing an array of possible remedies to enforce orders concerning custody, parenting time (visitation), alimony and/or child support. Such remedies include compensatory time with the children, economic sanctions, modification of the custodial arrangement, the entry of a monetary judgement for arrearages upon which interest

accrues, and incarceration. In addition, counsel fees may be awarded for actions taken to enforce existing court orders.

- Prohibiting sexual relationships between an attorney and a client or opposing counsel during the course of matrimonial litigation.
- Endorsing, to the extent it is practicable, "continuous" or uninterrupted matrimonial trials in counties with four or more Family Division judges. Those counties are: Atlantic, Bergen, Burlington, Camden, Essex, Hudson, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, and Union.
- Phasing in by the end of the year a system under which matrimonial cases are managed according to their complexity under one of four tracks: priority track (cases involving contested custody or parenting-time issues); complex track (cases likely to require a great amount of court and litigant resources in preparation for trial); expedited track (cases that are largely uncontested or involving marriages of less than five years, without children), and standard track (all other cases.)

The complete list of changes are contained in the attached Administrative Determinations by the Supreme Court on the Recommendations of the Special Committee on Matrimonial Litigation. Also attached are the Statement of Client Rights and Responsibilities and the amendments to the Rules of Court that reflect the changes in matrimonial practice. The documents also are available on the Judiciary's website at www.state.nj.us/judiciary.

The Special Committee on Matrimonial Litigation was chaired by Assignment Judge Linda R. Feinberg of the Mercer Vicinage, a former Family Court Judge, and Lee M. Hymerling, a Haddonfield attorney who serves as chair of the Supreme Court's Disciplinary Review Board.

The Statement of Client Rights and Responsibilities says, in part, that clients have the right to written retainer agreements fully explained before they are signed; to diligent attorneys; to itemized bills on a regular basis; to copies of all documents presented to the court; and to reasonable access to their attorneys. Clients also have the rights under the statement to be kept informed of court proceedings and to make the final decisions on whether to settle the case and the positions to be taken with respect to issues in the case.

The Statement says client responsibilities include providing full and accurate information to their attorneys; being available to participate in case-related matters; advising their attorneys promptly of changes in their lives that might affect the case; paying for legal services on a timely basis; reviewing legal bills and raising any objections on a timely basis; refraining from taking positions for improper purposes, such as to delay the proceedings or increase costs to other litigants; and considering the advice of their attorneys.