SUFFOLK ACADEMY OF LAW
The Educational Arm of the Suffolk County Bar Association
560 Wheeler Road, Hauppauge, NY 11788
(631) 234-5588

BETTER BILLING SERIES: Withdrawing from Representation

Presenters:

Howard Leff, Esq.

Program Coordinators: Allison C. Shields, Esq. and Debra L. Rubin, Esq.

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Howard B. Leff is an extremely experienced Matrimonial and Family Law attorney, having literally tried hundreds of custody, support, equitable distribution, family offense, and many other Matrimonial and Family Law related matters over the past 36 years.

Howard has lectured extensively on matrimonial and family law over the last 36 years in public and private settings on areas such as the equitable distribution laws, custody and visitation, support and maintenance, the "new" grounds for divorce, valuing licenses, degrees, certifications and business interests, electronic evidence and on many other topics. He was a guest lecturer at St. John's LLM tax class given by a former Federal Court Bankruptcy Judge on the interaction between matrimonial law and bankruptcy.

Howard maintains a very active appellate practice and has represented the prevailing party on a number of recent Appellate Division, Second Department cases dealing with the appreciation in value of separate property, "capping" a husband's pro-rata portion of the "parties'" child support obligation based on a combined income up to the then statutory amount of $136,000.00, and again up to the statutory amount of $141,000.00, the application of DRL §236(B)(8)(a) as it relates to health insurance being awarded to a wife beyond the term of her maintenance award, an award of 50% to the Husband of the appreciation in value of the Wife's investment property, the affirmance of the trial court's decision awarding to the father sole custody of his then 5 year old daughter, and on other recent cases handed down by that Court.

Howard is a member of the New York State Bar Association and Family Law Committee thereof, as well as the Nassau and Suffolk County Bar Associations and Family Law Committees thereof. In addition to the above, he has lectured extensively in various communities and to many local Bar Associations in Nassau and Suffolk Counties and other counties in the metropolitan area on Family Law and Matrimonial Law. Howard was an active member of the Executive Committee of the Matrimonial Bar Association of Suffolk County, as well as the past President of and lecturer for that Association, and for the Suffolk County Academy of Law. He has also received an "AV" rating by Martindale Hubbell, the highest rating an attorney can receive in our profession.

Howard is a member of the prestigious New York Family Law American Inn of Court and has participated in presentations given to that association on valuing business degrees, certifications and business interests.

HOW DO I WITHDRAW AS COUNSEL?

There are two ways to withdraw as counsel during the pendency of an action.

1- When your client consents to your withdrawal. When your client consents to your withdrawal as their attorney, your withdrawal is completed by serving and filing with the clerk of the County in which the case is pending, a Consent to Change Attorney form pursuant to CPLR§321(b)(1). This process is quick, easy and virtually free.

(i) Note that on the Consent to Change Attorney form, your client may substitute you as counsel for a different attorney or may substitute you for themselves so as to become a *pro se* litigant.

(ii) CPLR §321 (b)(1) provides: Change or withdrawal of attorney. 1. Unless the party is a person specified in section 1201[1], an attorney of record may be changed by filing with the clerk a consent to the change signed by the retiring attorney and signed and acknowledged by the party. Notice of such change of attorney shall be given to the attorneys for all parties in the action or, if a party appears without an attorney, to the party.

2- When your client does not consent to your withdrawal. When your client does not consent to your withdrawal, the process of withdrawing as your client's attorney becomes more time consuming, more costly and more complicated because your withdrawal can only be completed by order of the Court pursuant to CPLR§321(b)(2). In order to obtain a court order allowing you to withdraw as your client's counsel over your client's objection, you must file a "Motion to be Relieved".

(i) CPLR §321 (b)(2) provides: An attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct.

(ii) There are two main reasons you may want to withdraw as counsel despite your client's objection.

a. Deterioration of the attorney-client relationship. A few examples are as follows:
   i. Client won't take your advice or allow you to make strategic decisions;
   ii. Client insists that you take an outrageous position;
   iii. Client refuses to obey court orders;
   iv. Client questions your competence;
   v. Client refuses to communicate;

[1] Section 1201 relates to the representation of "infants, incompetent person or conservatee."

vi. Client refuses to make themselves available for necessary appointments (to sign net worth, etc.).

b. Failure of your client to pay your fees.

i. While it well founded in law that a client has the right to choose an attorney of their own selection, it is equally well founded in law that an attorney has the right to be paid for the services for which that attorney was retained.

WHAT IS REQUIRED TO MAKE A MOTION TO BE RELIEVED?

It is well established New York Law that an attorney has the right to terminate an attorney/client relationship and that an attorney may be relieved, pursuant to CPLR §321(b)(2), upon reasonable notice to the client and upon a showing of good and sufficient cause. (*Cantineri v Carrere*, 106 AD3d 1475 [4th Dep't 2013]); (*Khan v Dolly*, 39 AD3d 649 [2nd Dep't 2007]); (*Mason v MTA New York City Transit*, 38 AD3d 258 [1st Dep't 2007]); (*Williams v Lewis*, 258 AD2d 974 [4th Dep't 1999]); (*Bucaro v Keegan,Keegan, Hecker & Tully, P.C.*, 483 NYS2d 564 [1984]); (*People v Woods*, 457 NYS2d 173 [1982]);

(i) What constitutes reasonable notice? A Motion to be Relieved must be made upon notice to your client, notice to all other parties in the action and notice to any other appropriate person as the court may direct.

a. *Court's discretion*. As the manner of service is at the Court's discretion, if you are unable to serve your client for whatever reason, ask the Court to direct you as to how to serve your client. An instructive case is *Wong v Wong* (213 AD2d 399 [2nd Dep't 1995]) where counsel, after four years' lack of communication with the client and diligent efforts by counsel to locate the client, sought to withdraw upon motion. The trial judge's fashioning of an order for serving the missing client by certified mail to the client's last-known address and to her parents' residence was held to be within the court's broad discretion.

b. *Failure to properly notify*.

i. A purported withdrawal without proof that reasonable notice was given is ineffective. (*Williams v Lewis*, 258 AD2d 974 [4th Dep't 1999]).

ii. Where a motion to withdraw was granted without notice to defendants, court vacated default judgment against defendants after defendants failed to appear at trial. (*Birky v Katsilogiannis*, 37 Ad3d 631 [2nd Dep't 2007]).

(ii) What constitutes "good and sufficient cause"? Good and sufficient cause is found to exist where a client has failed and/or refused to cooperate with

counsel and in cases where a client has failed to pay their attorney's fees despite the client's ability to do so.

a. "Good and Sufficient Cause" found to exist.

i. Sufficient cause for withdrawal has been found where there are irreconcilable differences between the attorney and the client regarding the proper course to be pursued in the litigation and the client fails to pay attorney's fees or expenses necessary to carry on the litigation (*Misek-Falkoff v Metropolitan Tr. Auth.*, 65 AD3d 576 [2nd Dep't 2009]).

ii. Attorney was entitled to withdraw where client had failed to respond to any communication from attorney. (*Bok v Werner*, 780 NYS2d 332 [1st Dep't 2004]).

iii. Law firm was entitled to withdraw as counsel for wife in matrimonial action and was entitled to charging lien for legal services rendered to her where wife did not pay counsel fees and questioned her attorneys' competence, strategy and ethics, rendering it unreasonably difficult for firm to carry out its employment effectively. (*Kiernan v Kiernan*, 233 AD2d 867 [4th Dep't 1996]).

b. "Good and Sufficient Cause" found not to exist.

i. Appellate Division upheld the trial court's denial of mother's attorney's motion to be relieved for failure by said attorney to assert "good and sufficient cause" where, in a custody and visitation proceeding, the mother's counsel asserted only that he was moving his office out of the jurisdiction, and he made his motion to be relieved when the hearing had been underway for almost five months, after having represented the mother in the proceedings for four years, albeit not continuously. (*Khan v Dolly*, 39 AD3d 649 [2nd Dep't 2007]).

ii. Trial court did not improvidently exercise its discretion in denying counsel's motion to withdraw from representation of client in divorce action for failure of client to pay fees, absent evidence that client's conduct rendered it unreasonably difficult for counsel to carry out his employment effectively; client was making installment payments pursuant to arrangement to which counsel allegedly had previously agreed, and client asserted that she had every intention of paying counsel amounts due and owing. (*Cashdan v Cashdan*, 243 AD2d 598 [2nd Dep't 1997]).

iii. Supreme Court did not improvidently exercise its discretion denying law firm's motion to withdraw as counsel for clients in related actions for divorce and fraud; although law firm had not been paid by its clients for approximately one year as of time motion to withdraw, case had been pending for seven years and substitution of counsel would have only further delayed resolution of matter. (*Haskell v Haskell*, AD2d 333 [2nd Dep't 1992]).

iv. Appellate Division held that denial of counsel's application for leave to withdraw as counsel for defendant on eve of hearing on application to punish defendant for contempt for defendant's failure to make maintenance and mortgage payments was not abuse of discretion, although defendant had on eve of hearing imparted information to attorney which allegedly indicated that further representation of defendant by counsel would violate the disciplinary rules. (*Torres v Torres*, 169 AD2d 198 [2nd Dep't 1991]).

v. The Supreme Court (Jefferson County) held that neither the fact that the client's lawsuit was of questionable liability and asserted limited damages, nor the likelihood of an unfavorable trial result was the type of impairment of the attorney-client relationship that permitted withdrawal of counsel. (*Countryman v Watertown Housing Authority*, 820 NYS2d 757 [Sup. Ct. Jeff County, 2006]).

c. ***CAUTION***- Many Courts have held that nonpayment of counsel fees alone will not entitle an attorney to withdraw from representation. (*Kiernan v Kiernan*, 233 AD2d 867 [4th Dep't 1996]); (*Cashdan v Cashdan*, 243 AD2d 598 [2nd Dep't 1997]); (*Klein v Klein*, 800 NYS2d 348 [Sup. Ct. Nassau 2005]). However, many of these cases allude to the fact that had the attorney seeking to withdraw evidenced that their client refused to pay their attorney's fees despite the client's ability to do same, the attorney's request to withdraw would have, perhaps, been granted.

i. That being said, there have been courts that held that the nonpayment of counsel fees in violation of the client's retainer agreement is enough to fulfill the "good cause" burden.

(a) In *Galvano v Galvano*, 193 AD2d 779 [2nd Dep't 1993]), the Appellate Division reversed the Supreme Court's denial of an attorney's motion seeking to withdraw as counsel for the wife in a matrimonial action and stated the following, to wit: "The Plaintiff refused to pay the fees in accordance with the clear terms of the retainer agreement and had ceased payment on her account

more than two years before the appellant sought to withdraw. The appellant should not be forced to continue to "finance the litigation or render gratuitous services. (*Solomon v Soloman*[2], 172 AD2d 1081 [4th Dep't 1991])." ***Note that the Galvano Court noted that in addition to the client's failure to pay the attorney's fees, the client's conduct rendered it unreasonably difficult for the appellant to carry out its employment effectively.***

(b) In *Kaye v Kaye* (245 AD2d 549 [2nd Dep't 1997]), the Appellate Division overturned the Supreme Court's denial of the attorney's request to withdraw as the Wife's attorney on the basis that his client had failed to pay him in accordance with their retainer agreement. The court noted that there was no basis in that matter to compel the attorney to continue to "finance the litigation or render gratuitous services" although there may be circumstances in which a court may properly compel an attorney to continue to represent a client who is in arrears. The court further noted that there was no basis for same because the attorney had previously made a motion in the matter requesting that his fees be paid by the Husband. ***Again, it should be noted that in addition to the above, the Court stated that in addition to the client's failure to pay the attorney's fees, the client's conduct rendered it unreasonably difficult for the appellant to carry out its employment effectively.***

(iii) Notice of Motion v. Order to Show Cause. While CPLR §321(b)(2) does not specifically state whether a Motion to be Relieved must be made by Notice of Motion or by Order to Show Cause, in practice, unless otherwise directed by the Court (who has discretion to direct the manner in which a Motion to be Relieved should be filed), most motions are filed by Order to Show Cause so that a decision regarding same can be made in the shortest time frame thereby allowing the case to move forward without you (or with you if your motion is denied) and in order to stay the proceedings (interim relief) pending a determination on the motion.

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[2] Please note that in Solomon, the Court held that the attorney sufficiently demonstrated "good cause" to withdraw where, in addition to the client's failure to pay fees, the client also failed to fill out necessary paperwork such as a Statement of Net Worth and the client did not oppose the attorney's motion.

ETHICAL CONSIDERATIONS- Confidential Affirmation

When seeking to be relieved due to a break down in the attorney-client relationship, there will undoubtedly be fact specific information evidencing the breakdown of the relationship between you and your client. Since you are, as the attorney seeking to withdraw, required to give notice of your request to withdraw to your client and to your adversaries, many times you will be put in the precarious situation of determining how much information about your client to divulge in your Motion to be Relieved.

On one hand, you must outline for the Court, all the ways in which the relationship between you and your client has broken down (i.e. client will not allow you to make strategic decisions; your client is adamant that you take an unreasonable/untenable position in the matter; etc.).

On the other hand, you are bound by ethical considerations which make it difficult to decide whether or not certain information that you may want to divulge in support of your withdrawal request would prejudice your client or divulge information about your client that you are ethically prohibited from divulging.

In some circumstances, it may be helpful to file a confidential affirmation to the court, attached to your Motion to be Relieved, including the fact sensitive/prejudicial information that you do not think it is proper for your adversary to have. Said confidential affirmation is submitted only to the Court and to your client and is not given to your adversaries.

Although keeping certain fact sensitive and possibly prejudicial information from your adversaries may help alleviate a portion of your ethical concerns, you still must be cognizant that you are, by filing said confidential affirmation, submitting said fact sensitive/possibly prejudicial information about your client to the court (the trier of fact in a matrimonial action). As such, it is a slippery slope as to "how much is too much" when you are deciding what should be included in your overall motion and/or in your confidential affirmation.

As such, while drafting your Motion to be Relieved, it is important to keep the relevant ethical rules in mind. There are two rules that are specifically related to an attorney's withdrawal, to wit: (i) Rules of Professional Conduct Rule 1.16 (22 NYCRR 1200.0 rule 1.16 [c]); and (ii) Rule 1.6. The relevant portions of each are in bold font.

Rules of Professional Conduct Rule 1.16 provides that an attorney may withdraw from representing a client where the conduct of the client renders it unreasonably difficult for the attorney to properly represent the client. More specifically, Rule 1.16 provides the following, to wit:

22 NYCRR 1200.0 rule 1.16 [c]. A lawyer may withdraw from representing a client when:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action with which the lawyer has a fundamental disagreement;

(5) **the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees**;

(6) **the client insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law**;

(7) **the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively**;

(8) the lawyer's inability to work with co-counsel indicates that the best interest of the client likely will be served by withdrawal;

(9) the lawyer's mental or physical condition renders it difficult for the lawyer to carry out the representation effectively;

(10) **the client knowingly and freely assents to termination of the employment**;

(11) withdrawal is permitted under Rule 1.13(c) or other law;

(12) **the lawyer believes in good faith, in a matter pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal**; or

(13) the client insists that the lawyer pursue a course of conduct which is illegal or prohibited under these Rules.

(d) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a matter before that tribunal without its permission. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(e) Even when withdrawal is otherwise permitted or required, upon termination of representation, a lawyer shall take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the client, including

giving reasonable notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, promptly refunding any part of a fee paid in advance that has not been earned and complying with applicable laws and rules.

Rule 1.6 Confidentiality of Information provides the following, to wit:

(a) A lawyer shall not knowingly reveal confidential information, as defined in this Rule, or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person, unless:

(1) the client gives informed consent, as defined in Rule 1.0(j);

(2) the disclosure is impliedly authorized to advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community; or

(3) the disclosure is permitted by paragraph (b).

"Confidential information" consists of information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential. "Confidential information" does not ordinarily include (i) a lawyer's legal knowledge or legal research or (ii) information that is generally known in the local community or in the trade, field or profession to which the information relates.

(b) A lawyer may reveal or use confidential information to the extent that the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime;

(3) to withdraw a written or oral opinion or representation previously given by the lawyer and reasonably believed by the lawyer still to be relied upon by a third person, where the lawyer has discovered that the opinion or representation was based on materially inaccurate information or is being used to further a crime or fraud;

(4) to secure legal advice about compliance with these Rules or other law by the lawyer, another lawyer associated with the lawyer's firm or the law firm;

(5)(i) to defend the lawyer or the lawyer's employees and associates against an accusation of wrongful conduct; or

(ii) to establish or collect a fee; or

(6) when permitted or required under these Rules or to comply with other law or court order.

(c) A lawyer shall exercise reasonable care to prevent the lawyer's employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidential information of a client, except that a lawyer may reveal the information permitted to be disclosed by paragraph (b) through an employee.

HOW DO I GET PAID AFTER I WITHDRAW?

New York State provides three different remedies to an attorney who is discharged (without cause) or to an attorney who withdraws from representation so as to ensure payment from a former client, to wit: (i) the retaining lien; (ii) the charging lien; and (iii) a plenary action for breach of contract.

1. Retaining Lien. A retaining lien gives an attorney the right to keep all of the papers, documents and other property of the client which have come into the attorney's possession as a result of the attorney's representation of the client. This includes the client's entire file. A retaining lien is automatic once representation has commenced. An attorney may forfeit his/her right to a retaining lien by voluntarily giving away any of the items to which the lien may have attached. A retaining lien lasts until the attorney's fees have been paid in full or until a Court directs otherwise.

(a) There are some exceptions to the entitlement of a retaining lien, especially in a matrimonial action. The most common exception is "exigent circumstances".

(i) In *Katsaros v Katsaros* (152 AD2d 539 [2nd Dep't 1989]), the Appellate Division found that the attorney was not entitled to a retaining lien as a result of the client's "unrefuted allegations of indecency which the court found to be an "exigent circumstance" thereby making it inequitable for the attorney to retain the client's file.

(ii) In *JFD v JD* (45 Misc3d 1212(a)[Nass Sup 2014]), Judge Goodstein ordered the attorney to immediately release his file to the client because the client's trial was soon commencing.

2. Charging Lien. Charging Liens are governed by Judiciary Law §475 (Attorney's lien in action, special or other proceedings) which provides the following, to wit:

"From the commencement of an action, special or other proceeding in any court or before any state, municipal or federal department, except a department of labor, or the service

of an answer containing a counterclaim, or the initiation of any means of alternative dispute resolution including, but not limited to, mediation or arbitration, or the provision of services in a settlement negotiation at any stage of the dispute, the attorney who appears for a party has a lien upon his or her client's cause of action, claim or counterclaim, which attaches to a verdict, report, determination, decision, award, settlement, judgment or final order in his or her client's favor, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination. The court upon the petition of the client or attorney may determine and enforce the lien."

(a) The charging lien is based on the idea that the attorney has, by his skill and effort, obtained the judgment and should have a lien thereon for his compensation. Enforcement of the charging lien is founded upon the equitable notion that the proceeds of a settlement are within the control of the court.

(b) In matrimonial actions, a charging lien cannot attach to an award of child support or maintenance, but may attach to an award of equitable distribution.

(c) In a matrimonial action, a charging lien will be available "to the extent that an equitable distribution award reflects the creation of a new fund by an attorney greater than the value of the interest already held by the client. (*Wasserman v Wasserman*, 119 AD3d 932 [2nd Dep't 2014]); (*Zelman v Zelman*, 833 NYS2d 375 [Sup. Ct. New York County]).

(i) The right to a charging lien must be based on an entitlement not already held by the client. For example, in *Wasserman*, the Court granted the attorney's request for a charging lien because the law firm showed that their former client's award of the net proceeds from the sale of the former marital residence, which included an award for the former client's interest in her Husband's business, was obtained during the attorney's representation of the former client and was not an interest already held by the former client.

(d) A charging lien must be granted by way of motion. This request may be included in your Motion to be Relieved and must include the following information, to wit:

(i) A copy of the signed retainer agreement with Statement of Client's Rights;

(ii) Your itemized billing statements evidencing that same were sent to the client every 60 days;

(iii) Your statement as to why the fees that were charged are reasonable;

(iv) Your statement as to what sums of money your charging lien can attach to.

(e) It's important to note that having a charging lien is extremely helpful if you know there is real property that will soon be sold and in which your former client has an interest. You can (and should) request in your motion for the Court to direct your former client's real estate attorney to pay your charging lien at the closing of said real property.

(f) It should be noted that an attorney is not entitled to a money judgment against the former client as a result of the court's granting of a charging lien. In order to obtain a money judgment with interest on same, you must bring a plenary action as set forth below.

3. Plenary Action. The third remedy is to commence a plenary action for breach of contract against your client. Here, the court will need to determine the reasonable value of the attorney's services. This is called "*quantum meruit*".

(a) The right to commence a plenary action accrues immediately upon the attorney's discharge and/or withdrawal.

(b) To determine reasonableness of the attorney's fee, the court will consider the services rendered by the attorney; the terms of the retainer agreement; the nature of the litigation; the difficulty of the case; the amounts customarily charged by attorneys for such services in that geographical area; and, the results achieved by the attorney.

(c) Requirement of Notice to Arbitrate. Pursuant to Part 137 of the Rules of the Chief Administrator, you must serve your client with a Notice of Right to Arbitrate Fee. Sample language for same is as follows, to wit:

(i) "The amount of ENTER AMOUNT is due and owing for the providing of legal services in the case of *Husband v Wife.* If you dispute that you owe this amount, you have the right to elect to resolve this fee dispute by binding arbitration. To do so you must file a Request for Fee Arbitration within thirty (30) days from the date of the receipt of this Notice. If you do not file a request to arbitrate within said thirty (30) days, you will not be permitted to resolve this dispute by arbitration under

Part 137, and I will be free to bring a lawsuit in court to seek to obtain payment of my fee."

(ii) Your Complaint must include your Statement that you served your Notice of Arbitration and 30 days have passed. Also include your Notice of Arbitration with Affidavit of Service as an exhibit to your Complaint.

(d) Your Complaint must also include the following, to wit:

(i) Statement that you served your Notice of Arbitration and 30 days have passed. Also include your Notice of Arbitration with Affidavit of Service as an exhibit to your Complaint; and

(ii) A copy of the signed retainer agreement with Statement of Client's Rights; and

(iii) Your itemized billing statements evidencing that same were sent to the client every 60 days; and

(iii) Your statement that the work depicted in your itemized statements was actually completed by you.

(e) In a plenary action, you can ask for a money judgment with statutory interest, costs and disbursements.

(f) If your client fails to submit an Answer to your plenary action, you can file a default motion on your behalf stating that your client hasn't answered within the statutory time frame and evidencing that you followed the statutory guidelines as set forth above (notice of fee arbitration, etc.) and ask that a default judgment be entered against the client and in your favor. If default is granted, the Court will likely set the matter down for an inquest wherein you testify that the fees that were charged by you were charged pursuant to your retainer agreement, that fees charged by you are reasonable and that the fees charged by you have never been paid.

(g) If a money judgment is granted and you know where your client works, it is often successful to record your judgment in the county where your client works and ask the Sherriff to garnish your client's salary.

CONCLUSION

When seeking to be relived on any case, especially a matrimonial matter, be sure to argue the "Catch 22" conundrum. This is the "Catch 22" language I use when making a motion to be relieved, and am concerned the Court may not grant the application:

> "Additionally, if I am forced to continue to represent Ms. Smith in her matrimonial matter, either at trial, or during any further settlement negotiations, I am fearful that Ms. Smith will, sometime in the future, complain about the legal services I have provided to her, claiming that I somehow either "forced" her into a settlement that she did not voluntarily agree to, or that I have not used my best professional efforts in my representation of her, leaving me exposed either to a lawsuit and/or a grievance.
>
> Accordingly, I have now been placed in an untenable and unenviable position which creates exposure for me both professionally, as well as legally, clearly a predicament I don't care to be in at the present time.

Howard B. Leff, P.C.
1140 Franklin Avenue, Suite 208
Garden City, New York 11530
(516) 739-7500