



Law Office of Nick Mermiges, LLC
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PHONE/IN PERSON CONSULTATION TERMS,
INSTRUCTIONS, SAMPLE RETAINER AGREEMENT, &
INTAKE FORM

These terms were Last Updated January 21, 2025. If you are reading this, these are the firm's current terms regarding paid consultations, and this form accurately reflects our current hourly rate (\$400) for new clients, and our current minimum fee for most 'normal' (rather than complex or high conflict/high asset) divorce cases (\$8,000) and custody cases (\$10,000).

- a. We charge \$300 for a phone consult of up to 45 minutes, and \$600 for an in person consult of up to 90 minutes.
- b. To schedule a phone consult, pay \$300 via credit, debit or e-check via lawpay (<https://secure.lawpay.com/pages/nicklawsc/trust>) and then send a text to 803-587-0472 or an e-mail to Nick@NDMLaw.com with your name and times of availability for a call over the next 4 business days. We are frequently able to do a consult the same day, so include any time you are free today in your message or e-mail. (For example, if you make your payment on Monday morning, provide your dates and times for the remainder of Monday, and all of Tuesday, Wednesday, Thursday, Friday).
- c. We will respond via email or text message, usually no later than 2 business days after we receive your message, and we will confirming the date and time of the consult. We make a sincere effort to promptly respond to and consult with serious clients, and the majority (85%+) of the time, we are able to complete your phone consult within the 2-3 business days after you have paid us.
- d. We recommend but do not require that for all consultations, you fill out our intake form (preferably via MS Word, available at the following link: <https://ndmlaw.com/2023-NDMINTAKE.docx>) and e-mail it to Nick@NDMLaw.com prior to our consult.
- e. If we are unable to consult with you within the next four (4) business days, or for any other reason (for example, if we are prohibited from consulting with you due to ethical rules such as a conflict of interest), your payment will be promptly refunded through the LawPay payment portal.
- f. For an in-person consult, follow the steps above, a-d, except pay \$600, and please provide dates/times for the next 7 full business days, as we sometimes need to schedule these 90 minute in person consultations a little bit farther out. We will respond via email or text message, usually no later than 2 business days after we receive your message, confirming the date and time of the in person consult.

Specific Consultation Terms

- g. An attorney client relationship (and confidentiality/conflict of interest obligations) do not attach unless we accept your payment, keep the funds you have paid, and actually consult with you. *This prevents potential litigants from attempting to 'conflict us out' of new or existing cases by paying us and sending us an intake form.* Accordingly, our communications are not subject to attorney/client privilege, until we agree to accept your consult & payment. We have never had an issue with this one time in the past, but this term is included to prevent any potential ethical dilemmas.
- h. The new client intake form will not actually be reviewed unless we are available for a meeting, there is no conflict of interest, and we accept your payment.
- i. If we accept your payment and consult with you, whether via phone or in person, all conflict of interest and attorney/client confidentiality rules apply, meaning we will not disclose any of our communications, and are barred from representing (or consulting with) an opposing party in your case. (The specific terms of the South Carolina Rules of Professional Conduct Always Apply).
- j. If we follow up with you within 2 business days of your written scheduling request, but you either (1) fail to appear for a scheduled meeting or call; (2) do not respond to our attempts to schedule your consultation, or (3) decide you no longer wish to consult, the consult fee paid to us is non-refundable. However, we are reasonable and will work with you if there is an unanticipated emergency that requires a rescheduling.
- k. **Conflict of Interest Rules:** Please note that if we have previously represented an opposing parent or spouse, or we currently represent an opposing parent or spouse, we cannot take your case or consult with you. In general, if you wish to retain us or consult with us in a case that involves someone that we previously represented, and that person is a witness or is in an adversarial position towards you, we cannot take your case or consult with you. Our firm strictly follows all rules of professional conduct including conflict of interest rules. Any attempt to schedule a consultation under these circumstances will result in immediate refund of any monies paid.

SAMPLE RETAINER AGREEMENT IS ON FOLLOWING PAGE

THIS IS A SAMPLE RETAINER AGREEMENT

In the *majority* of non-emergency/non-expedited cases, our initial minimum retainer is \$8,000 (up to 20 hours), or \$10,000 (up to 25 hours). In any case involving contested child custody issues, our minimum fee is at least \$10,000 (up to 25 hours).

Where a client has an emergency, or retains us on an emergency-type deadline, an additional 10-15 hours may be required, such that the *majority* of emergency cases require an initial retainer of \$14,000 (35 hours).

Cases that are very legally or factually complex, very high conflict, very high asset, or cases where we are taking over for a prior attorney ahead of trial can require a larger initial minimum retainer payment than those set forth above. Each case is different.

With respect to nearly all clients, the only terms that are changed in their retainer agreement relate to initial retainer fees, trust account funds, and hours. Accordingly, if you hire us, you can expect that your retainer will have terms that are similar or identical to the ones set forth below. This sample retainer is current as of January, 2025. We do sometimes make minor changes to our standard retainer without updating this document on the website.

ATTORNEY FEE AGREEMENT
[CLIENT NAME] & THE LAW OFFICE OF NICK MERMIGES, LLC

NICHOLAS MERMIGES, ESO.

JAIME MCSWEENEY, ESO.

1. **Inception.** Law Office of Nick Mermiges, LLC, agrees to accept the representation of client, [Client Name], beginning on _____, 2025 and upon receipt of retainer fee, and ending upon the completion of the sought after tasks.
2. **Nature of Representation.** Upon receipt of retainer, Law Office of Nick Mermiges, LLC will represent client in the following:
[Divorce/Separation/Custody] Action in [Richland] County, SC Family Court.
3. **Fees and Services.** Attorney services for Nick Mermiges and Jaime McSweeney shall be rendered at the rate of \$400/hour. Client agrees to pay a non-refundable retainer in the amount of **\$12,000.00**. (Client Initials: _____). This is the minimum non-refundable fee, but not the maximum fee. The initial retainer will not be held in a trust account until the work is done, and is immediately earned upon receipt. The client is responsible for payment of all attorney time that exceeds 30 hours at the rate of \$400/hour. The client has the right to terminate representation and discharge the lawyer at any time. If lawyer fails to provide the agreed upon legal services, the client may be entitled to a refund of all or a portion of the fee. The client is responsible for the payment of all court costs, mediation

fees, guardian ad litem costs, and litigation costs.

Client shall also deposit \$0, into attorney's trust account to cover any litigation costs, and additional attorney time that exceeds 30 hours. Attorney is authorized to reimburse the firm from trust account funds for any costs incurred, or to pay all necessary costs directly from the trust account. Attorney is authorized to directly pay the firm for additional attorney time beyond 30 hours from funds held in trust. If Client's funds in trust become exhausted, client agrees to add additional funds to the trust account within 15 days of any written request (including documented costs and fee invoice showing time spent) from attorney. At the conclusion of the case, attorney will provide client with an itemized list of costs (to include invoices and/or proof of payment) and an itemized fee invoice. If there are remaining funds held in trust at the end of the case, the client is entitled to a refund of all unspent and unearned funds.

Attorney may, at his discretion, advance up to \$500 in costs for client's case (such as filing fees, copy fees, motion fees, service fees, etc.) Client shall pay back all advanced sums within 15 days of request by attorney. Attorney may, at his sole discretion, elect to reduce his retainer fee to cover certain costs previously advanced.

Attorney's representation in family court, in line with the standard practice of nearly all family Court attorneys in the area, does *not* include the preparation of specific specialized orders that occur after the entry of a final order or final decree of divorce. Client will need to engage a separate professional to prepare Qualified Domestic Relations Orders for division of retirement, and Military Pension Division Orders for division of military retirement. Attorney will facilitate the submission of those orders, but the retainer fee paid to attorney does not include the costs associated with preparing those separate orders.

Additionally, unless specifically included in subsection 2, above, the scope of this retainer does not include contempt actions to enforce family court orders, even if they are filed under the same case number. Contempt actions are considered separate actions, and absent a written understanding by attorney and client, require a separate retainer and fee payment.

4. Retainer Explanation:

Attorney sets the non-refundable retainer after an initial meeting with client, based upon the perceived difficulty/complexity of the case, gravity of the issues at stake, demand from other potential clients for attorney's services, and the reasonable fees for legal services

charged in the community. Attorney's objective is to provide client with quality, sophisticated representation at a reasonable and predictable price. To that end, attorney expects that if the Client's case does not require excessive time (generally defined as no more than one court hearing, followed by a mediation, followed by a final hearing to approve settlement), the case will not cost more than the Client's non-refundable retainer.

In the event Client's case becomes heavily contested, requires complex discovery, or otherwise includes excessive time (such as repeat correspondence, unresolved high conflict issues, or novel/complex legal matters) it is possible the retainer could be consumed earlier than set forth above.

Client understands that there are some cases that become contentious and/or cannot be settled in a fair way and require a trial, and that under those circumstances the case could cost substantially more, into the tens of thousands of dollars. Generally, less than 5% of contested cases end in a trial, but client must be aware of the potential cost of such a trial. In the unfortunate event that a trial is required, Client shall be responsible for all of Attorney's time at the rate of \$400/hour, and shall be required to advance funds to cover all anticipated trial time and costs within a reasonable time (at least 60 days, unless attorney agrees to a shorter time) prior to the trial date. Attorney shall be allowed to send client a written request for these funds via e-mail. Trial funds are held in trust, as governed by the above retainer, and are earned as time and costs are spent. Client understands that attorney cannot work for free, or for promise of future payment, as legal services cannot be 'repossessed' in the same manner as a vehicle or a home. Failure to provide financial security prior to trial shall constitute grounds for attorney to withdraw from the case.

In rare circumstances, attorney and client may agree to different payment arrangements so long as these arrangements are confirmed in writing (via e-mail). If attorney sends an e-mail concerning additional payment arrangements, client shall be deemed to have agreed to these arrangements unless client responds to the email within 7 days and indicates they do not agree.

Conversely, there are some cases where Attorney may be able to facilitate a relatively quick and fair final settlement, such that the total time spent is less than the 10 hours set forth in the initial retainer fee. Client understands that Attorney is being paid to reach such a fair and favorable resolution, and that Attorney's effort and skill are required to reach such a resolution. The non-refundable retainer fee contemplates that if there is such a prompt,

favorable resolution, attorney shall keep the full initial retainer fee, as attorney's skill, reputation and responsiveness are integral to reaching such a prompt favorable resolution (this does not apply to any additional funds held in attorney's trust account, which will be accounted for and refunded as set forth above).

5. **Discovery.** Client understands that all pleadings and discovery responses must be supported by facts and that responses to discovery matters must be accurate and honest and provided within timeframes established by law and rule. Client agrees to cooperate fully and in a timely manner to provide such discovery responses. Client also agrees to provide accurate and timely information regarding all finances. Client agrees to update and supplement all discovery responses with additional relevant information as the case moves forward, so that attorney can supplement discovery as necessary. In general, client agrees to cooperate with all discovery and any objections or motions for protective order must be made in good faith, based on attorney's judgment concerning the rules of discovery.

Cases of this kind require that your attorney be as familiar as possible with all of the facts bearing on the issues, regardless of how trivial or potentially embarrassing you may believe them to be. Therefore, it is essential that client share all even remotely relevant facts with the attorneys. Generally, such information shared in the context of the attorney-client relationship is privileged and confidential. However, client should be aware that, under some extraordinary circumstances, such as where a client persists in giving false testimony or uses false documents, client confidentiality may yield and the lawyer may have an obligation to withdraw from the representation and possibly disclose the false information. In these rare circumstances, attorney will explain the controlling rules of professional conduct to client, and the necessary steps required if attorney is to remain in the case. Attorney also has the right to consult with other counsel regarding certain facts, law and circumstances concerning client's case (without identifying client). Accordingly, while in nearly all cases, attorney/client privilege applies to all direct communications between attorney and client, all client communication may not be confidential.

6. **Billing/Prompt Payment/Late Charges/Cost of Collection.**

Personal check, cashier's check, e-check, and cash payments are the preferred form of payment. All payments made using a credit card or a debit card are subject to a 3% processing fee, which is added at the time payment is made.

Client understands that attorney will not be issuing monthly or periodic bills, because initial retainer is non-refundable. If the non-refundable retainer and/or funds in trust have

been completely depleted (due to time spent and costs incurred), Attorney will issue bills at his discretion (whether periodically, or after specific tasks have been completed). The full balance of all bills will be paid within 15 days of e-mailed transmission. Further, if Client's funds in trust become exhausted, client agrees to add additional funds to the trust account within 15 days of any written request (including documented costs and fee invoice showing time spent) from attorney. Attorney will also issue such bills as are necessary in connection with fee requests during court hearings. Client may request an itemized list of time entries at any time, and attorney shall provide client with the itemized list within 20 days of such a request. Client agrees that attorney may "block bill" for emails, phone calls, and monitoring the file. This means that attorney will enter a single monthly time entry for these tasks rather than itemizing every single entry.

Attorney shall have the right to bill for federal holiday communications, weekend communications, or communications after 6PM on week days at 150% of the time spent, such that any such communications will effectively cost \$600 per hour rather than \$400 per hour. Attorney may include these after-hours communications in the monthly 'block bills' for communication time. *Clients are not discouraged from sending non-urgent emails or otherwise communicating to attorney after hours or on the weekends when they have free time.* So long as attorney's response is not requested or expected to be provided after hours, on weekends, or on holidays, this provision will not apply. Client also understands that an attorney is not the same as an emergency room doctor, and that courts are closed on weekends and holidays, such that while attorney makes a good faith effort to respond immediately, or within 1-2 business days of any client communication, attorney may not always be immediately available. Like all other working people, attorney does sometimes take vacations of 1-2 weeks, and when any vacation is taken, provides an automatic e-mail response. Client communications are very high priority, and will be responded to when attorney is available.

If client sends a communication and has not received a response within 2 business days, and attorney does not have an 'auto response' e-mail in place, client is encouraged and directed to send follow up communications, in the event that attorney is in trial or is otherwise busy. We do not want our clients to be afraid to follow up with us to get their questions answered promptly. This is almost never a problem, but it is important that clients understand that they should and must follow up with attorney if they are concerned that questions have not been answered. Do not be shy or afraid to follow up with us. We want

you to be as satisfied and secure as possible during this process.

Client understands that prompt payment of bills is absolutely essential to a sound attorney-client relationship and agrees to communicate with Nick Mermiges, Esq. if any bill cannot be promptly paid in full.

If client does becomes in arrears on any bill for services rendered, and client continues to allow Law Office of Nick Mermiges, LLC to perform services after falling in arrears, client waives the right to contend that past services or charges were unwarranted or unreasonable.

Law Office of Nick Mermiges, LLC reserves the right to withdraw from representation at any time when it is determined that there is not adequate security for the payment of fees, or that there is an arrearage on the fees that have previously been billed. Client understands that Law Office of Nick Mermiges, LLC is under no legal obligation to finance the cost of representation or work without being paid.

Venue for collection law suits shall be Columbia, SC,

If client does not pay the bill, client grants to Law Office of Nick Mermiges, LLC a lien on all of client's real and personal property to secure payment of the bill of Law Office of Nick Mermiges, LLC. In addition, client shall pay the reasonable costs of hiring an attorney to collect any past due fees and expenses.

7. **Termination/Conclusion.** Law Office of Nick Mermiges, LLC reserves the right to withdraw from the case if client has misrepresented, lied, or failed to tell us important facts relevant to the case; if Client fails to follow advice; does not make payments required by this agreement or any other subsequent agreement, or fails to provide adequate security for payment; or engages in any other conduct that constitutes grounds for withdrawal under the Rules of Professional Conduct. Clients are unequivocally advised to preserve all evidence that is relevant to their case. You may not delete or destroy any social media, text messages, e-mails, photographs, or other relevant evidence. We are an ethical law firm and our goal is to find the truth and get justice for our clients. We follow all rules of professional conduct, and our goal is to provide honest services to our clients. If any issues arise concerning destruction of evidence, or violation of any ethical rules, we will take all necessary steps to remedy and disclose the situation (with client knowledge and consent) or we will move to be relieved as counsel. Further, if Client insists upon attorney taking positions that are unfounded, obstructionist,

deliberately dilatory, or otherwise unsupported by law, Attorney may move to be relieved. Finally, in the event that Client wishes to engage in conduct or request court relief that, in attorney's judgment, is harmful to child welfare or safety, Attorney shall have the right to be relieved as counsel. Client should understand that this is almost never an issue in any of attorney's cases, but that this language is included in order to comply with all rules of professional responsibility.

The client may discharge Law Office of Nick Mermiges, LLC at any time by providing signed, written notice to Law Office of Nick Mermiges, LLC of the decision to terminate the representation. In the event of termination, client understands and acknowledges that certain procedures may need to be followed before Law Office of Nick Mermiges, LLC representation is completely terminated. For example, in the event Law Office of Nick Mermiges, LLC has entered an appearance in a court, Law Office of Nick Mermiges, LLC is not relieved of responsibility as the client's attorney until an order is signed by the court permitting withdrawal or substituting counsel. Client understands and agrees that the client's file must remain with Law Office of Nick Mermiges, LLC until properly terminated by order of a court. Client also agrees to provide Law Office of Nick Mermiges, LLC with a reasonable amount of time to respond to the client's termination and to take steps necessary to secure copies of part or all of the file as set forth above.

Additionally, and as set forth above, client agrees to pay for any time and costs expended to turn over client file(s) and other information to the client or substitute counsel, as well as paying the remaining fees and expenses due on the account in full.

Separate from rules concerning termination, Client understands that Attorney's representation of client shall formally end upon the entry of a final order in the client's family court case, or upon the entry of an order dismissing their family court case. Once attorney's representation has concluded, attorney's obligation to continue answering questions and/or communicating with or on behalf of the client formally ends. If, at the conclusion of a case, client has engaged an outside specialist to prepare a QDRO or Pension Division Order, attorney's continuing representation will be limited to executing and mailing the prepared order for client. However, if client fails to hire an outside professional, and/or the order is prepared within 120 days of the entry of the final order in client's case, Attorney's representation of client and obligation to client will end. Attorney, as a courtesy, frequently continues to forward along emails and answers simple questions in the 60 days after a case ends, but is not required to do so under this retainer agreement.

Additionally, if prior to a formal case being filed, client stops responding to more than one of attorney's e-mails for a period of more than 30 days, or makes no attempt to contact attorney for a period of more than 90 days (presumably because they have reconciled with their spouse), or otherwise chooses not to proceed with their case, the non-refundable retainer portion of client's payment will be deemed earned by attorney, and the obligation to provide any additional legal services under this retainer agreement will end. In general, if client has hired and paid attorney, but has not attempted to move forward with filing a contested case within 9 months after the date of this agreement, attorney has the right to treat the non-refundable fee as earned, and insist that client make a new retainer payment (and sign a new agreement) if they wish to start a new case. Client has an affirmative obligation to contact attorney to check the status of the filing of their case, at least once every 90 days, where they hired attorney prior to filing.

While the issues addressed in this section rarely arise, this section is intended to clarify the terms of when a *pre suit case ends*, and it also intended to clarify that that after the case is over (with a final order being entered), the attorney/client relationship ends, and client understands that attorney's time continues to be valuable, such that attorney can't agree to answer unpaid client questions for an indefinite period of time after the end of the case.

8. **Billing Inquiries.** Billing inquiries are welcomed and encouraged. If a question arises, client should contact Nick Mermiges, Esq directly for phone or personal discussion. Such billing conferences will be at no charge to the client. Client will be billed for all attorney time spent on this case, including travel time, at the agreed upon rate of \$400/hour.
9. **Agreements among Counsel.** Attorney will never enter into any binding agreements or consent orders concerning spousal/child support, payment of money to the other spouse, property, parenting time, fees or other substantive issues without client's express consent beforehand. Client understands that answer dates, discovery response dates, and deadlines are routinely extended or rearranged through agreement of counsel. Client waives any objection to such extensions and agreements among counsel. In custody case, Client explicitly and irrevocably authorizes attorney to consent to lifting the guardian ad litem's fee cap, so long as the percentage allocation of the guardian ad litem's fees are unchanged (this is because requests for a GAL to lift their fee cap are essentially never denied by the Court, and any client who objects to this is essentially refusing to follow critical legal advice). Attorney is authorized to consent to extend any of these deadlines, including

applicable 365 day deadlines. Attorney is also authorized to schedule mediation dates, and other hearing dates at his discretion. While client will be given ample notice of all dates and deadlines, client expressly authorizes attorney to consent to all scheduling and deadline related issues, and other completely routine matters, such as the entry of standard GAL orders, without obtaining prior client consent beforehand. Client has the right to revoke this authorization, by notifying attorney in writing. However, such revocation shall constitute grounds for attorney to withdraw from the case, at the discretion of attorney. Client should understand that this is almost never an issue in any of attorney's cases, but that this language is included in order to comply with all rules of professional responsibility.

10. **Recovery of Fees.** Client understands that recovery of attorney's fees is unlikely where both parties are employed, where neither party has significant income or wealth, or where the party seeking fees is at fault in the litigation. Fees are more frequently awarded after trial, rather than at a temporary hearing. Unless instructed otherwise, counsel will seek attorney's fees in all pleadings (complaints and counterclaims). Counsel will not seek fees at routine temporary hearings unless counsel specifically believes recovery of fees is reasonably likely and in client's interest. Counsel will request fees at counsel's discretion in temporary hearings, unless client explicitly instructs counsel to pursue or not pursue said fees at a given hearing.
11. **Paperless Client File & Document Retention:** We generally run a paperless/cloud file system, and scan in all important client documents, which makes them much easier to transmit to the client, and other parties involved in the case. This allows us to send documents to clients who want to review them via e-mail without having to schedule a client meeting where they are billed for coming in and looking thorough hundreds of pages of documents. Client authorizes attorney to keep a "paperless" client file, meaning that the client's case documents may be electronically retained in the cloud via scan (generally PDF format), and the paper documents may (at attorney's discretion) be immediately destroyed. Client further authorizes attorney to keep a partially paperless client file, where certain voluminous documents and records are kept electronically, and other paper records are maintained in client's file at attorney's discretion. Client understands that some cases involve thousands of pages of documents, and that if client requests their file, attorney has the right to provide them with their complete case file in electronic format (i.e., thumbdrive,

dropbox link or the like), as no paper file may exist, and as attorney is not obligated to pay to print thousands of pages. Attorney will follow all statutory and professional rules concerning document/file retention, including retention of notarized original documents. Attorney has the right to discard, dispose of, delete or destroy client files 7 years after representation of client has concluded.

12. **Mailing Instructions and Copies of Materials.** Client will accept e-mailed court documents without restriction at: [e-mail]

Clients are expressly instructed to ensure that their e-mail addresses are secure, such that they should change their passwords and make sure that emails are not left 'logged in' after retaining us. We do not want an opposing party reading our private communications.

Client will accept physical mail at the following address without restriction:

[Address]

Law Office of Nick Mermiges, LLC will provide client with file materials when deemed necessary. Law Office of Nick Mermiges, LLC follows a policy of not mailing clients everything that occurs in a file in the belief that clients are best served by not being reminded of the case or litigation by the receipt of every single document. If client wishes to receive copies of everything, they may do so by notifying Law Office of Nick Mermiges, LLC in writing of the desire for copies of all materials.

UNDERSTOOD AND AGREED:

CLIENT

DATE _____

EMPLOYMENT ACCEPTED:

Law Office of Nick Mermiges, LLC

DATE _____