

Court to Law Firm: No Letter of Engagement, No Fee

BY LAZAR EMANUEL

Describing his decision as the first he could find construing the new provisions of 22 NYCRR 1215.1 and 1215.2, Judge Pardes of the Nassau County District Court has denied a claim for legal fees by a law firm which failed to supply its client with the required letter of engagement. *Feder, Goldstein, Tanenbaum & D'Errico v. Ronan*, N.Y.L.J., May 6, 2003, p. 21.

22 NYCRR 1215.1 and 1215.2 were adopted on March 4, 2002 and amended on April 3, 2002. The new rules require an attorney who undertakes to represent a client in any matter and charges or expects to charge a fee to "provide to the client a written letter of engagement before commencing the representation or within an reasonable time thereafter...." Part 1215 applies to all matters except domestic relations matters. Domestic relations matters are covered by 22 NYCRR 1400, which requires written retainer agreements in any matter in the Supreme Court or in Family Court concerning a claim or action for divorce, separation, annulment, custody, visitation, child support or alimony. Part 1400 was adopted in 1993 and has undergone extensive review by the courts.

Judge Pardes extended the same penalty to lawyers who fail to supply clients with a letter of engagement under §1215 as has been exacted of lawyers who fail to execute retainer agreements in matrimonial matters: no letter or agreement, no fee.

The Feder firm ("Feder") alleged that one of its members had represented lawyer Ronan and his law firm in two matters pending in New York County Supreme Court, that its services were substantial, and that its bill for services was unpaid. Defendant Ronan claimed that Feder had done nothing more than appear to request one adjournment, that its services were a gratuitous "courtesy," and that no fee was owed. Ronan also argued that Feder's claim for legal fees was precluded by its failure to deliver a letter of engagement.

Judge Pardes granted Ronan's motion to dismiss the Feder complaint. He cited those cases under Part 1400 which denied legal fees to lawyers who failed to execute retainer agreements in domestic relations matters, and those cases in which discipline was imposed on lawyers who violated Part 1400.

The opinion by Judge Pardes fails to mention the amount of Feder's bill. We can reasonably assume, if we accept Ronan's statements that Feder's services consisted only of one court appearance, that Feder's bill did not exceed \$3,000. This raises the interesting question: why did neither plaintiff Feder nor Judge Pardes point to the exception in Section 1215.2 which excludes from the requirement of a letter of engagement "representations where the fee to be charged is expected to be less than \$3,000"?