

C. Excessiveness of the Fee: Disproportionateness to the Financial Resources of the Client or to the Relief Sought

If the combination of the hourly rate and the number of hours actually expended yields a fee that is grossly disproportionate to the limited financial resources of the matrimonial litigants or to the value of the services, then the fee may be deemed excessive. It may then be reduced to a reasonable amount in light of the complexity of the matter and the amount of the marital assets.¹²⁶ However, the fact that the client complained of a "lack of progress" in the matrimonial action is not, in and of itself, a basis for reducing the fee.¹²⁷ The obligation of a client to pay the attorney is not conditioned on the success of the lawyer's efforts.¹²⁸

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If an attorney is highly competent and expends five hours of effort to accomplish what most other attorneys would require ten hours to do, and the attorney then bills for ten hours of time to reflect the proper value of the work done, that would be illegal, unethical, and a breach of the lawyer's fiduciary obligation.¹²⁹ The appropriate way for the attorney to obtain payment commensurate with his value is to reflect that value in a higher hourly rate or fixed fee. If an

¹²⁶ Stern, *supra* note 111; *In re Keiser*, 263 A.D.2d 609, 694 N.Y.S.2d 189, 190 (3d Dep't 1999) (respondent's \$22,000 fee in this "fairly simple" matrimonial action was clearly excessive where the "subject divorce raised no compelling legal issues ... parties' marriage was of short duration (less than three years) and produced no children; ... [there were] no custody, visitation or child support issues ... neither spouse was claiming spousal maintenance ... [and there was] virtually no marital property to be distributed."). *Theroux v. Theroux*, 145 A.D.2d 625, 536 N.Y.S.2d 151, 154 (2d Dep't 1988) (quantum meruit award of less than the amount sought by the attorney was appropriate "particularly in view of the results obtained, the time required, the work performed, the simplicity of the case, and the limited financial resources of the matrimonial litigants.").

¹²⁷ *Matter of McNamee, Lochner, Titus & Williams and Killeen*, 235 A.D.2d 17, 663 N.Y.S.2d 356, 358 (3d Dep't 1997).

¹²⁸ *Id.* at 357-58 ("by signing the retainer agreement, respondent agreed to pay an hourly fee for legal services rendered on her behalf This obligation to pay was not conditioned on nor linked to the progress, outcome, or result of the matrimonial proceedings.").

¹²⁹ ABA Comm'n on Ethics and Prof'l Responsibility, Formal Op. 93-379 (1993).