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OUR INADEQUATE ATTORNEY'S LIEN STATUTES—A SUGGESTION

GEORGE NEFF STEVENS*

The average attorney has little interest in, nor does he realize the inadequacy of, the attorney's lien laws of his state—until he finds himself personally involved. Yet, a glance at the law reviews and pertinent cases indicates that the organized bar and its individual members should show more than a casual interest in the number and variety of problems arising in this field.[1]

THE COMMON LAW

Before looking at the present picture, a few generalizations concerning the attorney's lien at common law will prove helpful for purposes of background and comparison:[2]

First, the general or retaining lien. This lien gave an attorney the right to retain the papers and documents of his client which came into his (the attorney's) possession during the course of his professional employment for the general balance of compensation due him for professional services undertaken for the client. It was a possessory lien. It was a passive lien; that is, it could not be enforced by foreclosure and sale.

Second, the special or charging lien. This was a lien upon the judgment obtained for for the client as a result of the attorney's professional services for compensation for such services in that particular

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[1] Over fifty notes, comments, and articles have appeared on the subject under consideration during the past twenty-five years. If interested, a check list is available at the University of Washington Law School Library.

[2] See for example, BROWN, PERSONAL PROPERTY §§ 115 and 116, p. 500 et. seq. (2nd ed., 1955).

case. It was invented to protect attorneys from unscrupulous clients by preventing such clients from receiving the benefits of the judgment without paying for the services which made the recovery possible.[3]

Third, the right of off-set. This consisted of a right in the attorney to apply all monies of the client received by the attorney in his professional capacity against the general balance of compensation due him by the client for professional services.[4]

As of the end of 1955, thirty-one states and Alaska have some form of attorney's lien statute.[5] Before examining them, the better to understand their coverage and their weaknesses, a look at the major problems which have developed is definitely in order.

THE PROBLEMS

The problems may be classified, for convenience, into six groups:

1. Extent of lien coverage, property. What kinds of property are subject to attorney's liens? Is the lien good for the general balance of compensation due him, or only for the services rendered in a particular case? Does the kind of property involved have any effect on whether the lien is for the general balance of compensation due or for services in a particular case only?

2. Extent of lien coverage, persons. Does the lien protect the attorney against parties, interested third persons, federal, state or local governmental agencies?

3. Extent of lien coverage, services outside of court. Is court action necessary? Is a dispute placed in the hands of an attorney sufficient?

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[3] *Contra:* Gottstein v. Harrington, 25 Wash. 508, 65 Pac. 753 (1901), "Originally, at the common law there was no attorney's charging lien." See also, Plummer v. Great Northern Ry. Co., 60 Wash. 214, 110 Pac. 989 (1910).

[4] *Contra:* State v. Lewis, 31 Wash. 75, 71 Pac. 778 (1903).

[5] Ala., Alaska, Ark., Colo., Ga., Idaho, Ill., Ind., Iowa, Kan., Ky., La., Me., Mass., Minn., Mo., Mont., Neb., Nev., N.J., N.Y., N. Dak., Okla., Oreg., R.I., S. Dak., Tenn., Utah, Va., Wash., Wisc., Wyo. States with no general attorney's lien statutes: Ariz., Calif., Conn., Del., District of Columbia, Fla., Hawaii, Md., Mich., Miss., N.H., N.M., N. Carolina, Ohio, Pa., S. Carolina, Texas, Vt., W. Va.

All footnote references to statutory material are based on the statutes and codes herein below listed, and, in the interest of space economy no further reference to the particular compilation employed will be made: CODE OF ALA. (1940); ALASKA COMP. LAWS ANN. (1949); ARK. STAT. 1947 ANN; COLO. REV. STAT. 1953; CODE OF GA. ANN. (1936); IDAHO CODE ANN. (1947); SMITH-HURD ILL. ANN. STAT.; BURNS IND. STAT. ANN. (1946 replacement); IOWA CODE ANN. (1950); GEN. STAT. OF KAN. ANN. (1949); KY. REV. STAT. (1953); WEST'S LA. REV. STAT. ANN. (1950); REV. STAT. OF ME. (1954); ANN. LAWS OF MASS. (1955); MINN. STAT. ANN. (1947); VERNONS' ANN. MO. STAT. (1948); REV. CODES OF MONT. ANN. (1947); REV. STAT. OF NEB. 1943—reissue of 1954; NEV. COMP. LAWS (1929); N.J. STAT. ANN. (1952); MCKINNEY'S CONSOLIDATED LAWS OF N.Y., JUDICIARY LAW (1948); N. DAK. REV. CODE OF 1943; OKLA. STAT. ANN. (1936); OREG. REV. STAT. (1953); R. I. GEN. LAWS (1938); S. DAK. CODE OF 1939; TENN. CODE ANN. (1934); UTAH CODE ANN. (1953); CODE OF VA. (1950); REV. CODE OF WASH. (RCW); WIS. STAT. (1953); WYO. COMP. STAT. (1945).

What about work done before boards or commissions? What about arbitration?

4. Notice. How is notice of lien given? Does the notice requirement differ for different kinds of liens, for different kinds of property, or where different classes of persons are or may be involved? When does the lien become effective—the problems of settlements, assignments, priorities and waivers?

5. Enforcement. May the attorney foreclose his lien? How?

6. Release of lien. Does the client, or an interested third party, have a simple inexpensive, summary way of raising and settling disputes arising out of claims for an attorney's lien? Is the attorney adequately protected?

THE STATUTES

With these problems in mind, a look at attorney's lien statutes throughout the United States is in order.

A number of states have statutes which state that an attorney has a lien for his compensation,[6] or, for the general balance of his compensation;[7] upon the papers of his client which have come into his possession,[8] or, upon the papers of his client which have come into his possession in the course of his professional employment;[9] upon money,[10] property,[11] personal property,[12] choses in action,[13] claims and demands,[14] and causes of action[15] of his client in his hands.[16] In this group of statutes, the attorney's lien is created by the statute and it

[6] Ala. Title Sec. 64; Alaska Sec. 26-8-1; Ga. Sec. 9-613; Minn. Sec. 481.13; Oreg. Sec. 87.495; and RCW 60.40.010.

[7] Colo. Sec. 12-1-10 and 12-1-11; Iowa Sec. 610.18; Kan. Sec. 7-108; Neb. Sec. 7-108; N. Dak. Sec. 35-2008; S. Dak. Sec. 32.1205; and Wyo. Sec. 2-116. It should be noted that both N. Dak. and S. Dak. in spite of this general statement limit the use of papers and money to the particular case by later provisions in the same act.

[8] Ga. Sec. 9-613; and Oreg. Sec. 87.495.

[9] Ala. Title 46 Sec. 4 (1); Alaskan Sec. 26-8-1 (First); Colo. Sec. 12-1-10 and 12-1-11; Iowa Sec. 610.18 (1); Kan. Sec. 6-108; Minn. Sec. 481.13 (1); Neb. Sec. 7-108; N. Dak. Sec. 35-2008 (1); S. Dak. Sec. 32.1205 (1); RCW 60.40.010 (1); and Wyo. Sec. 2-116.

[10] Ala. Title 46, Sec. 64 (2); Alaska Sec. 26-8-1 (Second); Colo. Sec. 12-1-10 and 12-1-11; Ga. Sec. 9-613 (2); Iowa Sec. 610.18 (2); Kan. Sec. 7-108; Minn. Sec. 481.13 (2); Neb. Sec. 7-108; N. Dak. Sec. 35-2008 (2); Oreg. Sec. 87.495 (1); S. Dak. Sec. 32.1205 (2); RCW 60.40.010 (2); and Wyo. Sec. 2-116.

[11] Colo. Sec. 12-1-10.

[12] Oreg. Sec. 87.495 (1).

[13] Colo. Sec. 12-1-10.

[14] Colo. Sec. 12-1-10; Ky. Sec. 30.200; and R.I. Chap. 450, Sec. 1.

[15] R.I. c. 450, Sec. 1; Va. Sec. 54-70; and Wis. 256.37.

[16] Note well, that in not a single state in this group, footnotes 10-15, is found a requirement that these items come into the attorney's hands "in the course of his professional employment." Was this intentional, or oversight? See Comment on this point Isaminger, *Attorney's Liens*, 14 OREG. L. REV. 536 (1935).

is effective without further notice or claim of lien on the part of the attorney.

Continuing, several states have statutes which provide that the attorney shall have a lien for his compensation, or for the general balance of his compensation,[17] upon money in the hands of the adverse party from the time of giving notice of the lien to that party;[18] some add the requirement that the notice must be in writing;[19] another provides that the attorney has a lien upon the interest of the client in any money or property (real or personal) involved or affected by the action from the commencement of the action, and that this lien becomes effective as against third persons from the time notice is given such persons.[20] Along the same lines, several states have statutes which provide for an attorney's lien on the client's cause of action, claim or demand, which becomes effective as against adverse parties from the time notice,[21] or written notice,[22] is given to them. The lien thus created attaches, upon notice, to the verdict, report, judgment, decree, determination, decision, award or final order, and, in addition, to any money or property which may be recovered.[23] One statute specifically states that the lien attaches not only to the decisions of state courts but also to those of municipal or federal departments, and is effective regardless of in whose hands the money or property recovered may be.[24]

A rather common type of attorney's lien statute provides that the attorney has a lien upon actions, suits and proceedings after the commencement thereof, and upon judgments, decrees, orders and awards entered therein, and upon the proceeds thereof in whomsoever's hands they may be, for his agreed fees, or if no agreement, for the reasonable value of his services.[25] Several states include decisions by state,

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[17] See footnotes 6 and 7.

[18] Alaska Sec. 26-8-1 (Third); Colo. Sec. 12-1-11; Neb. Sec. 7-108; RCW 60.40.010 (3); and Wyo. Sec. 2-116.

[19] Iowa Sec. 610.18 (3); Kan. Sec. 7-108; N. Dak. Sec. 35-2008 (3); and S. Dak. Sec. 32.1205 (3).

[20] Minn. Sec. 481.13 (3).

[21] R.I. c. 450, Sec. 1. See also Ky. Sec. 30.200, "If the records show the name of the attorney, the defendant shall be deemed to have notice of the lien."

[22] Ark. Sec. 25-301 (by registered mail); Ill. c. 13, Sec. 14 (by registered mail stating attorney's interest); N.Y. Sec. 475-a (very detailed requirements); Va. Sec. 54-70; and Wis. Sec. 256.36.

[23] Ark Sec. 25-301; Ill. c. 13, Sec. 14; and Ky. Sec. 30.200.

[24] N.Y. Sec. 475 and 475-a.

[25] Idaho Sec. 3-205; Mass. c. 221, Sec. 50 (authorized commencement); Minn. Sec. 481.13 (3); Mo. Sec. 484.130; Mont. Sec. 93-2120; Nev. Sec. 8923; N.J. Sec. 2A: 13-5; N.Y. Sec. 475; Okla. Title 5, Sec. 6; Oreg. Sec. 87.495 (2); Tenn. Sec. 8035; and Utah Sec. 78-51-41. See also, Ala. Title 46, Sec. 64 (2), (3), (4).

municipal and federal boards and departments as well as courts.[26] By virtue of the statutory language found in most of these provisions, the commencement of the action creates the lien, and no notice of claim of lien, as such, is required.[27] A few states, however, have required notice of claim of lien in this type of lien situation.[28]

A somewhat different type of statute provides for an attorney's lien upon a judgment, decree, order or award from the time of giving notice to the adverse party,[29] or, from the filing of notice with the clerk of the court in which the judgment, etc., was entered,[30] or both.[31] A few statutes create such a lien on judgments and decrees without any requirement of notice or filing of a claim of lien.[32] In only a few of the statutes in this group, as compared to the group in the paragraph above, was the lien on the judgment, etc. specifically extended to the money or property, real or personal, recovered.[33]

A substantial number of states have provided that if an attorney acquires an attorney's lien in accordance with the statutory requirements, such lien shall not be affected by any settlement between the parties to the controversy, either before or after judgment, decree, order or award.[34]

In several instances, the attorney's lien statutes have established the priority of the attorney's lien: For example, the attorney's lien on suits, judgments and decrees for money,[35] or, upon actions, suits and proceedings after the commencement thereof,[36] shall be superior

[26] Mass. c. 221, Sec. 50; and N.Y. Sec. 475.

[27] Idaho Sec. 3-205; Mass. c. 221, Sec. 50 (authorized commencement); Mo. Sec. 484.130; Mont. Sec. 93-2120; Nev. Sec. 8923; N.J. Sec. 2A: 13-5; N.Y. Sec. 475; Oreg. Sec. 87.495 (2); Tenn. Sec. 8035; and Utah Sec. 78-51-41. See also Ala. Title 46, Sec. 64 (2), (3), (4).

[28] Colo. Sec. 12-1-10 and 12-1-11; Minn. Sec. 481.13 (3), (4), (5); and Okla. Title 5, Sec. 6 (Oklahoma provides that, "Notice shall not be necessary provided that such attorney has filed such pleading in a court of record, and endorsed thereon his name, together with the words 'lien claimed'."). See also, Ga. Sec. 9-613 (4) "All persons bound if claim of lien on property recovered is filed within 30 days after recovery of same."

[29] Minn. Sec. 481.13(5).

[30] Colo. Sec. 12-1-10; Ind. Sec. 4-3619; Iowa Sec. 610.18 (4); N. Dak. Sec. 35-2008 (3); S. Dak. Sec. 32.1205 (4); and RCW 60.40.010 (4).

[31] Alaska Sec. 26-8-1 (Fourth).

[32] Ky. Sec. 30.200, "If the records show the name of the attorney, the defendant shall be deemed to have notice of the lien"; La. Sec. 9:5001.

[33] Ky. Sec. 30.200; La. Sec. 9:5001; and Minn. Sec. 481.13 (3), (4), (5).

[34] Ala. Title 46, Sec. 64 (2); Ark. Sec. 25-301; Idaho Sec. 3-205; Mo. Sec. 484.130 and 484.140; Mont. Sec. 93-2120; Nev. Sec. 8923; N.J. Sec. 2A: 13-5; N.Y. Sec. 475 and 475-a; Okla. Title 5, Sec. 6; Oreg. Sec. 87.495 (2); R.I. Chap. 450, Sec. 1; Utah Sec. 78-51-41; Va. Sec. 54-70; and Wis. Sec. 256.36 and 256.37. See also, Ky. Sec. 30.200, "If the parties, before judgment, in good faith compromise or settle their differences without payment of money or other thing of value, the attorney for the plaintiff shall have no claim against the defendant for any part of his fee."

[35] Ala. Title 46, Sec. 64 (2).

[36] Oreg. Sec. 87.495 (2).

to all liens except tax liens; in cases of demands in suit and judgments, the lien shall be notice to everyone that the attorney has a first lien for the amount of his fee;[37] the attorney is granted a lien on all judgments obtained, and on the property recovered, to take rank as a first privilege (lien) thereon.[38]

Set-off problems have not been dealt with widely. Several statutes provide that the attorney's lien on a judgment is subordinate to the rights existing between the parties to the action or proceeding.[39] On the other side, one state has a statute which states that executions shall not be set-off against each other in such a way as to hurt the attorney's lien.[40]

Several states have faced the problem of whether the attorney should have a lien where the state is a party. One statute provides that the attorney shall have a lien upon all claims put in his hands, "except those of the state."[41] In a second jurisdiction, the attorney can perfect his lien against the state or a political subdivision by proper notice.[42] Do statutes which give the attorney a lien on any money or property which may be recovered "in whatever hands they may come," found in a number of states,[43] protect the attorney's lien against the state or its political subdivisions? In view of the common law attitude towards liability of the state, it would seem wise to make a specific reference to the state's, or political subdivision's, responsibility in this matter.

In the area of establishment and enforcement of liens, several statutes provide that the attorney may apply money in his hands to the satisfaction of the lien and claim,[44] and retain papers in his hands until the claim is satisfied.[45] The attorney in possession of personal property of his client may sell the same under certain conditions according to the statute of one state.[46]

A statutory right to enforce the attorney's lien is provided in a number of states.[47] The proper procedure varies considerably: For

[37] Colo. Sec. 12-1-10.
[38] La. Sec. 9:5001.
[39] Alaska Sec. 26-8-1 (Fourth); and Minn. Sec. 481.13 (5).
[40] Me. c. 118, Sec. 28.
[41] Ky. Sec. 30.200.
[42] Mass. c. 221, Sec. 50A.
[43] Ala. Title 46, Sec. 64 (3); Ark. Sec. 25-301; Ga. Sec. 9-613 (3); Idaho Sec. 3-205; Minn. Sec. 481.13 (4), "wherever situated"; Mo. Sec. 484.130; Mont. Sec. 93-2120; Nev. Sec. 8923; N.J. Sec. 2A: 13-5; N.Y. Sec. 475 and 475-a; Okla. Title 5, Sec. 6, "wherever found"; Oreg. Sec. 87.495 (2); and Utah Sec. 78-51-41.
[44] Ala. Title 46, Sec. 64 (1); Ga. Sec. 9-613 (1); and Oreg. Sec. 87.495 (1).
[45] Ala. Title 46, Sec. 64 (1); Ga. Sec. 9-613 (1); and Oreg. Sec. 87.495 (1).
[46] Ga. Sec. 9-614.
[47] Ala. Title 46, Sec. 52, and Sec. 64 (3); Mass. c. 221, Sec. 50.

example, the enforcement may be instituted by motion,[48] by petition,[49] by the proper civil action,[50] by foreclosure,[51] by summary proceeding,[52] by an action for equitable relief,[53] or, by the same procedure that the client has.[54]

From the client's point of view, several state statutes provide that any interested person may release the attorney's lien by executing a bond in a sum double the amount claimed, or in a sum to be fixed by the court, payable to the attorney, with security to be approved by the clerk of the court, conditioned to pay any amount finally found due the attorney, which amount may be ascertained by suit on the bond.[55] Such states also provide for automatic release of the attorney's lien unless he furnishes a detailed statement of his claim for services.[56] Several statutes, after setting up an attorney's lien, provide in later sections that an attorney who receives money or property of his client in the course of his professional employment, and refuses to pay or deliver it in a reasonable time, after demand, is guilty of a misdemeanor,[57] or may be required to show cause why he should not be punished for a contempt.[58] These statutes also establish a procedure under which the attorney so charged may ask that his right to a lien be determined, or that the court require the client to post security in an amount sufficient to satisfy the lien, when determined, as a condition of release of the lien; but, none of them provide specifically for enforcement or establish an adequate enforcement procedure.[59]

Contrasted with this rather drastic approach several states have established a more equitable procedure. In one jurisdiction the judgment debtor may obtain release from the attorney's lien and any further claims by paying the full amount of the judgment or decree into court, and in several others the statute provides that upon request of the client the court may determine and enforce the lien.[60]

[48] Ala. Title 46, Sec. 52.
[49] Ark. Sec. 25-302; Ill. c. 13, Sec. 14; N.J. Sec. 2A: 13-5; and N.Y. Sec. 475 and 475-a.
[50] Colo. Sec. 12-1-10, which has been held to be a suit in Equity, see Fillmore v. Wells, 10 Colo. 228, 15 Pac. 343 (1887).
[51] Ga. Sec. 9-614; Minn. Sec. 481.13 (6).
[52] Kan. Sec. 7-109; Mass. c. 221, Sec. 50 B; and Minn. Sec. 481.13 (6).
[53] Minn. Sec. 481.13 (6); and R.I. c. 450, Sec. 1.
[54] Oreg. Sec. 87.495 (2).
[55] Iowa Sec. 610.19; N. Dak. Sec. 35-2009; and S. Dak. Sec. 32.1206.
[56] Iowa Sec. 610.20; N. Dak. Sec. 35-2009; and S. Dak. Sec. 32.1206.
[57] Iowa Sec. 610.21 and 610.22
[58] Minn. Sec. 481.14; and RCW 60.40.020.
[59] Minn. Sec. 481.14; and RCW 60.40.030.
[60] The first, Oreg. Sec. 87.495 (2); the second, Mass. c. 221, Sec. 50; and N.Y. Sec. 475.

THE SPECIFIC—WASHINGTON

Among these statutes are the answers to most of the problems posed earlier in this paper. However, deciding which provisions are most effective, a study of the operation of an attorney's lien statute in a particular state—in this instance, Washington—will serve to highlight the problems of statutory interpretation and construction, and thus, the need for careful draftsmanship.

In Washington the lien for attorneys' fees has been regulated by statute since 1863.[61] In 1881 a provision was added setting forth how and where notice of lien on a judgment should be filed.[62] No other changes have been made, although the revisors of the Revised Code of Washington took some liberties with the statutory language. The present statute, as it appears in RCW 60.40.010 is as follows:

> Section 60.40.010 Lien created. An attorney has a lien for his compensation, whether specially agreed upon or implied, upon:
>
> (1) The papers of his client which have come into his possession in the course of his professional employment;
>
> (2) Money in his hands belonging to his client;
>
> (3) Money in the hands of the adverse party in an action or proceeding, in which the attorney was employed, from the time of giving notice of the lien to that party; and
>
> (4) A judgment to the extent of the agreed sum (if the services were rendered under a special agreement) otherwise the value of the services performed by him in the action, from the time of filing notice of his lien or claim with the clerk of the court in which the judgment is entered, which notice shall be filed with the papers in the action in which the judgment was rendered, and an entry made in the execution docket, showing name of claimant, amount claimed, and date of filing notice.

Before examining this statute in detail it would seem expedient to see what the Supreme Court of Washington has said about it in general. A few quotations will serve:

Generalizations

1. "The cases necessarily proceed upon the assumption that the right to an attorney's lien in this state rests upon the statute, and there is no common law or equitable lien in Washington."[63]

2. "The statute of this state is merely declaratory of the common law on the question of the general or retaining lien. . . ." [64]

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[61] LAWS OF WASHINGTON TERRITORY 1863, p. 406, Sec. 12.
[62] Code of 1881, Sec. 3286.
[63] Humptulips Driving Co. v. Cross, 65 Wash. 636, 118 Pac. 827 (1911).
[64] Gottstein v. Harrington, 25 Wash. 508, 65 Pac. 753 (1901).

3. "As there was no such common law lien, the [charging] lien, if any exists, must be derived from the statute."[65]

Now, a look at the detail. The statute provides that "An attorney has a lien for his compensation, whether specially agreed upon or implied, upon" the four items thereafter listed. Does the statute give him the right to use the lien for the general balance of compensation due him for *all* legal services performed for a particular client, or is the lien limited to compensation for services in a specific case only? What does "for his compensation" mean? Does it have a different meaning under each of the four subsections?

Papers

RCW 60.40.010 (1) provides for a lien upon:

> The papers of his client which have come into his possession in the course of his professional employment;

The Washington Supreme Court has held that this is a codification of the common law retaining lien; that such papers may be held for the general balance of compensation due, and not just to secure payment in the particular case in which the papers were obtained; that this lien on papers, being a retaining lien, cannot be enforced, but may merely be used to embarrass the client; that the lien may not be assigned; and that loss of possession of the papers means loss of the lien.[66] Thus, the court has read into the Washington statute, so far as subdivision (1) is concerned, all of the attributes and characteristics of the common law attorney's lien on papers of the client which have come into the attorney's possession in the course of his professional employment.

Money

RCW 60.40.010 (2) provides for a lien upon:

> Money in his hands belonging to his client;

Does it matter how the money comes into the attorney's hands? You will note that the requirement found in subdivision (1) "which came into his hands in the course of his professional employment" is missing in subdivision (2). Was this accidental or intentional? Does that make any difference? May the attorney hold money of his client which comes into his hands, regardless of in what capacity, to satisfy

[65] Plummer v. Great Northern Ry Co., 60 Wash., 214, 110 Pac. 989 (1910).
[66] Gottstein v. Harrington, 25 Wash. 508, 65 Pac. 753 (1901). See also, Hudson v. Brown, 179 Wash. 32, 35 P.2d 756 (1934).

his claim for the general balance of compensation due for *all* legal services, or may the money be held only for services rendered in the particular case by virtue of which it came into the attorney's possession? It is obvious that if the money involved came into his hands in other than a professional capacity, it can be held, if at all, only under a claim of lien for the general balance of compensation due for *all* legal services rendered. On the other hand, money from a particular case might or might not be available for the general balance of compensation due, depending upon the kind of lien which the court holds was created by subdivision (2) of the statute.

Thus, the language of the statute gives rise to several problems:

1. Is the lien created by this provision a retaining lien, or
2. Is it a charging lien?
3. If it is a retaining lien, do the common law characteristics attach?
4. If it is a charging lien, what are its characteristics? and
5. Must the money come into the attorney's hands in his capacity as an attorney?

The Washington Supreme Court has held that an attorney has a charging, and not merely a retaining, lien upon monies which come into his possession in the course of his professional employment; that the money thus in his hands is properly held for the general balance of compensation due; and that the lien on monies under subdivision (2) is not just a passive lien, like that on papers, but is enforceable.[67] This interpretation, interestingly, gives subdivision (2) characteristics of both the common law retaining lien (right to hold for the general balance of compensation due) and the charging lien (a right to enforce).

The Washington Supreme Court has not passed on question 5 above. As a problem of statutory interpretation is it significant that subdivision (1) contains the restriction "in the course of his professional employment" whereas subdivision (2) does not? How should, or will, this point be decided? In the interim, the extent of the attorney's lien is, to say the least, uncertain!

Personal Property

RCW 60.40.010 (1) and (2) make no reference to kinds of personal property other than (1) papers and (2) money; nor does the statute specifically limit potential liens to these two classes of personal

[67] Price v. Chambers, 148 Wash. 170, 268 Pac. 143 (1928). See also, Gottstein v. Harrington, 25 Wash. 508, 65 Pac. 753 (1901).

property. If the generalizations of the Washington Supreme Court, mentioned previously, are controlling, then the Washington lawyer's right to claim a lien on the personal property of his client which comes into his possession is definitely restricted. Unfortunately, no Washington Supreme Court case has met this question head on. In the two cases in this state in which the issue might have been raised, the attorney's right to claim a lien on the property involved was assumed. One of the cases involved warrants,[68] the other, a negotiable instrument.[69] Do these cases involve "papers," or "money," or are they precedents, weak perhaps but precedents, for the right to claim an attorney's lien on a chose in action?

Money—Adverse Party

RCW 60.40.010 (3) provides for a lien upon:

> Money in the hands of the adverse party in an action or proceeding, in which the attorney was employed, from the time of giving notice of the lien to that party; . . .

Does the Washington attorney have a right to claim a lien on money in the hands of the adverse party for the general balance of compensation due, or only for fees for services in the "action or proceeding"? What kind of a lien is this? At common law it would be classed as a charging lien, since the possessory requirement of the retaining lien is missing. A dictum in a Washington Supreme Court case calls it a special or charging lien.[70] But, since liens which at common law were retaining liens have been given charging lien advantages by the Washington Supreme Court, may not the court give charging liens some of the advantages of retaining liens—at least where such an interpretation would be consistent with the language of the statute?

If the common law approach is adopted, and no Washington case has passed on this, then the lien will be limited to compensation for services in the particular case. Such a simple solution, however, is not possible here, for the difference in the language of subdivision (3) and subdivision (4) raises an important point of statutory construction. Both subdivisions (3) and (4) would be, at common law, charging liens. In subdivision (4), but not in (3), nor (2), nor (1), the lien is limited specifically to "services performed by him in the action." While the legislative intent is not as clearly expressed as it ought to

[68] *In re* 8th Avenue, 82 Wash. 398, 144 Pac. 533 (1914).
[69] *In re* Dungeness Timber Co., 50 Fed. Supp. 370 (W.D., Wash., 1942).
[70] Gottstein v. Harrington, 25 Wash. 508, 65 Pac. 753 (1901).

be, is it not sufficiently plain? In view of this difference in language, and the construction given by the court to the lien coverage under subdivisions (1) and (2), the Washington Supreme Court might well hold that the coverage of subdivision (3) extends to the general balance of compensation due for *all* professional services to the particular client.

Because subdivision (3) does not involve possession by the attorney, notice of the claim of a lien becomes important. The statute simply provides that the attorney has a lien from the time of giving notice.

When may such notice be given? Do the words "in an action or proceeding" mean that the attorney cannot obtain a lien on money in the hands of the adverse party until a law suit is commenced? If so, what constitutes a "commencing"? The Washington Supreme Court has held that "in order for a lien to arise from notice under this section [3], there must be an action or proceeding pending against the adverse party in some court . . . of this state."[71]

If you want and need a lien, and there are times when you may,[72] get your law suit started, as quickly as possible!

The Washington Supreme Court has held that failure to give the notice provided by the statute defeats the lien as to the adverse party.[73] What kind of a notice is required? Must it be in writing? To whom should the notice be given—to your client, the opposing party, his lawyer? How do you give it? The statute is silent. A decision of the Washington Supreme Court holds that ". . . the notice must necessarily be in writing since it must be filed with the clerk of the court and with the papers in the action."[74] The court's bifocals must have slipped, for it has read into subdivision (3) the notice requirements of subdivision (4)! And, although the reasoning of the case is obviously wrong, that is the law of Washington until changed!

Several other problems remain. Must the notice state the amount of the claim? We can not tell. Does the lien attach to property, real or personal, other than money, in the hands of the adverse party? Apparently, not. What happens to a lien properly perfected under subdivision (3) after the cause of action is reduced to a favorable judgment? Must the attorney obtain a new lien under subdivision (4)? Unfortunately, there are no answers, as yet, to these questions.

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[71] Plummer v. Great Northern Ry Co., 60 Wash. 214, 110 Pac. 989 (1910).
[72] Kearn v. Chicago M. & P. S. Ry. Co., 201 Fed. 404 (W.D., Wash., 1913).
[73] *Ibid.*
[74] McRea v. Warehime, 49 Wash. 194, 94 Pac. 924 (1908).

Judgments

RCW 60.40.010 (4) provides for a lien upon:

> A judgment to the extent of the agreed sum (if the services were rendered under a special agreement) otherwise the value of the services performed by him in the action, from the time of filing notice of his lien or claim with the clerk of the court in which the judgment is entered, which notice shall be filed with the papers in the action in which the judgment was rendered, and an entry made in the execution docket, showing name of claimant, amount claimed, and date of filing notice.

The statutory language would, by common law standards, create a charging lien, both as to enforceability[75] and as to extent of coverage. But, to what does the lien attach? Just to the judgment? If so, how does one enforce the lien? What about the fruits of the judgment? Does the lien attach to money, to real or personal property seized and sold, or subject to seizure and sale, under execution, to real or personal property which is the subject matter of the judgment, to real or personal property cleared by, or returned as a result of, the judgment? The statute gives no clue, and no Washington case has discussed the problem.

Is the point at which the attorney may perfect his lien, such as it may be, adequate? In other words, when is there "a judgment" upon which or against which a lien may be filed under subdivision (4)? The Washington Supreme Court has ruled that "...a lien cannot attach until the written judgment is formally entered...."[76] In the interim between the oral pronouncement and the written judgment, the attorney may well, as he did in that case, lose his chance for payment! Little solice, I am sure, were the words of the court, "Where it appears that parties have conspired to defeat the attorney's compensation, a court will, on proper showing, allow the case to proceed at the attorney's instance to protect his lien." For the court added that since the attorney had no lien, the rule did not apply!

The Problem of Settlements

Settlements by conniving clients have been a problem. The Washington Supreme Court, in absence of a statute, has set down several guiding principles:

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[75] Gottstein v. Harrington, 25 Wash. 508, 65 Pac. 753 (1901) (dictum).
[76] Cline Piano Co. v. Sherwood, 57 Wash. 239, 106 Pac. 742 (1910).

1. A client may at any stage of a case compromise or dismiss his action or suit, even though his attorney may object.[77]

2. This is so even where the attorney by agreement with his client has a lien on the judgment, and the attorney has given notice of this agreement to the adverse party through his attorney. The reason—if the attorney wants a lien which will be good against the adverse party he must comply with the statute.[78]

3. Where it appears that parties have conspired to defeat an attorney's compensation, a court will, on proper showing, allow a case to proceed at the attorney's instance in order to protect his lien.[79] Is this proposition contrary to 1 above? It would appear that it is not, for in neither case had the attorney perfected his lien prior to the settlement, and, in addition, proposition 1 goes only to the right of a client to settle without the attorney's consent, and not to the effect of settlement on an existing lien.

4. Where the attorney's lien has attached, it cannot be affected by a subsequent compromise or settlement of the case by the parties where they have proper (*i.e.* statutory) notice of the lien.[80]

5. But, a settlement entered into before an action is commenced cannot be the subject of a lien, as money in the hands of the adverse party, because provision for such a lien applies only after action is started and proper notice is given.[81]

Applying these principles, there is no way, at present, for the Washington attorney to protect his fees, by lien, against settlements made prior to the time a suit is commenced, or between the time a judge decides a case in favor of the client and the date of the entry of the formal judgment.

The Question of Assignments

Assignments have also caused trouble. The Washington Supreme Court has held that an assignment of a judgment, made in good faith and without collusion (by whom?) is not subject to an attorney's lien upon the judgment filed subsequent to the assignment.[82] The facts

[77] McRea v. Wareheim, 49 Wash. 194, 94 Pac. 924 (1908); Plummer v. Great Northern Ry. Co., 60 Wash. 214, 110 Pac. 989 (1910).

[78] McRea v. Wareheim, *supra* note 77; Plummer v. Great Northern Ry. Co., *supra* note 77.

[79] Cline Piano Co. v. Sherwood, 57 Wash. 239, 106 Pac. 742 (1910); Kearn v. Chicago M. & P. S. Ry. Co., 201 Fed. 404 (W.D., Wash. 1913).

[80] Cline Piano Co. v. Sherwood, *supra* note 79; Kearn v. Chicago M. &. P. S. Ry. Co., *supra* note 79. The McRea case was not mentioned in the opinion in the Cline case!

[81] Plummer v. Great Northern Ry. Co., 60 Wash. 214, 110 Pac. 989 (1910).

[82] Humptulips Driving Co. v. Cross, 6 Wash. 636, 118 Pac. 827 (1911).

show that the assignee knew of the attorney's participation in the case, but had no knowledge of a claim of lien. Yet, is this not a loop-hole in the attorney's lien law by means of which a client, bent on knavery, may reap the harvest of the attorney's labor without paying a cent? The court did not mention an earlier Washington case which involved the assignment of a claim by the client during the trial. In this earlier case it was held that the fact that the attorney had knowledge of the assignment by his client of the claim which was in litigation would not estop the attorney from claiming a lien upon the judgment recovered, where there had been no express waiver of the right of lien.[83]

These cases are in conflict. In both, the assignment was made before the attorney had perfected his lien. In the earlier case he was given a priority; in the later case, he was not.

Does this mean that the assignment by a client of his cause of action before it is reduced to judgment is subject to an attorney's lien filed on the judgment in due course; whereas an assignment of the judgment, after judgment and before an attorney's lien is filed, takes priority over a claim of lien which is perfected after the assignment was made? It would seem so!

Agreements for Attorney's Lien

The Washington Supreme Court has held that an agreement for an attorney's lien, made with the client, will be strictly construed against the attorney,[84] and that such an agreement does not give the attorney a lien against a third party,[85] even if such person has notice of the agreement.[86]

Priorities

In summary, the Washington Supreme Court has established the following priorities:

1. An attorney's possessory lien on negotiable paper, and the proceeds thereof, takes precedence over the claims of creditors of the client, even in reorganization or bankruptcy proceedings.[87]

2. An attorney's lien, once perfected, cannot be altered or affected by a subsequent settlement, but

[83] Niagara Fire Ins. Co. v. Hart, 13 Wash. 651, 43 Pac. 937 (1896).
[84] *In re* 8th Avenue, 82 Wash. 398, 144 Pac. 533 (1914).
[85] Kearn v. Chicago M. & P. S. Ry. Co., 201 Fed. 404 (W.D., Wash. 1913).
[86] McRea v. Wareheim, 49 Wash. 194, 94 Pac. 924 (1908); see also, Plummer v. Great Northern Ry. Co., 60 Wash. 214, 110 Pac. 989 (1910).
[87] *In re* Dungeness Timber Co., 50 Fed. Supp. 370 (W.D., Wash., 1942).

3. A settlement takes precedence over the right to claim an attorney's lien.[88]

4. The assignee of a client's cause of action takes it subject to the attorney's right to claim a lien upon the judgment.[89]

5. However, the assignee of a client's judgment, where assignment was made in good faith, takes it free of the attorney's right to claim a lien.[90]

6. The attorney's right to a lien upon a judgment takes precedence over a right claimed by the judgment debtor to set off a judgment obtained by the judgment debtor against the client after the judgment involved was entered but before the attorney's lien was perfected.[91]

Waiver or Loss of Lien

The Washington Supreme Court has laid down several rules with respect to what acts will result in a waiver, or loss of lien.

1. Parting with possession.[92]

2. Failure to reserve the lien when stipulating with the client or third parties concerning the property on which the lien is claimed.[93]

3. Being present and participating in satisfaction of the judgment upon which the lien is claimed.[94]

4. But, knowledge of assignment of a cause of action during litigation will not estop the lawyer from claiming a lien upon the judgment recovered where there has been no express waiver of the right to claim a lien.[95]

Funds Upon Which a Washington Attorney May Not Claim a Lien

No Washington case has discussed this problem. However, the Attorney General has stated in an opinion that an attorney's lien will not attach to money paid under RCW 51.32.040 (Workmen's Compensation).[96]

How May the Attorney Enforce His Lien?

What better starting point on the enforcement problem than a quotation from a Washington Supreme Court decision?:

[88] Cline Piano Co. v. Sherwood, 57 Wash. 239, 106 Pac. 742 (1910); McRea v. Wareheim, 49 Wash. 194, 94 Pac. 924 (1908).
[89] Niagara Fire Ins. Co. v. Hart, 13 Wash. 651, 43 Pac. 937 (1896).
[90] Humptulips Driving Co. v. Cross, 65 Wash. 636, 118 Pac. 827 (1911).
[91] Spokane Security Finance Co. v. Bevan, 172 Wash. 418, 20 P.2d 31 (1933).
[92] Gottstein v. Harrington, 25 Wash. 508, 65 Pac. 753 (1901).
[93] Jensen v. Kohler, 93 Wash. 8, 159 Pac. 978 (1916).
[94] Holbrook v. McKee, 147 Wash. 386, 266 Pac. 187 (1928).
[95] Niagara Fire Ins. Co. v. Hart, 13 Wash. 651, 43 Pac. 937 (1896).
[96] OPINIONS OF THE ATTORNEY GENERAL, Wash., 1929-30, p. 549.

> The statute, [RCW 60.40.010], which authorizes an attorney's lien on a judgment, makes no provision for the procedure to be followed in enforcing the lien nor of any procedure that would destroy it.[97]

As a result, the court has had to make the rules as the problems have arisen. The cases indicate that:

1. the attorney has no right of action by which he can enforce his lien upon *papers* or *personal property* of his client in his possession.[98]

2. the attorney has a charging and not merely a retaining lien on *money* of the client in his hands. But, the court fails to state what difference it makes.[99] A federal case in Washington says that "the attorney would have the right... to retain *and apply* the proceeds upon the amount due them..."[100] [italics added]. Has Washington adopted the common law off-set approach where money is concerned? I think not. The Supreme Court of Washington has held, in a criminal case involving an attorney, that a claim of lien confers no right to convert the funds in his hands to his own use.[101] It is not clear from the cases just how an attorney can get for his own use the money owed him, from the money he holds under a claim of lien, if the client refuses to cooperate.

3. after a claim of lien has been filed, the attorney may "bring an action to foreclose and have the right to the lien and its reasonableness determined in a proper forum."[102] But, unfortunately not only is the language of the cases rather vague as to how, but also the cases are not on all fours with the proposition suggested.

4. the attorney may cause execution to issue on a judgment against which he claims an attorney's lien.[103]

[97] State *ex rel.* Angeles B. & M. Co. v. Superior Court, 89 Wash. 342, 154 Pac. 603 (1916). Title 60 of the RCW lists 18 different liens for various and sundry purposes. All means of enforcement of these liens is specifically provided in sixteen instances. For obvious reasons no enforcement procedure appears in the sevententh—lien for internal revenue. This leaves only the attorney's lien without statutory enforcement procedures.

[98] Gottstein v. Harrington, 25 Wash. 508, 65 Pac. 753 (1901); *In re* 8th Avenue, 82 Wash., 398, 144 Pac. 533 (1914).

[99] Gottstein v. Harrington, *supra*, note 98; Hudson v. Brown, 179 Wash. 32, 35 P.2d 756 (1934); Price v. Chambers, 148 Wash. 170, 268 Pac. 143 (1928).

[100] *In re* Dungeness Timber Co., 50 Fed. Supp. 370 (W.D., Wash., 1942).

[101] State v. Lewis, 31 Wash. 75, 71 Pac. 778 (1903). See also, State v. Gilliam, 94 Wash. 243, 161 Pac. 1194 (1917).

[102] State *ex rel.* Angeles B. & M. Co. v. Superior Court, 89 Wash. 342, 154 Pac. 603 (1916). See also, the language of McRea v. Wareheim, 49 Wash. 194, 94 Pac. 924 (1908); Price v. Chambers, 148 Wash. 170, 268 Pac. 143 (1928); and Keyes v. Ahrenstedt, 164 Wash. 106, 1 P.2d 843 (1931).

[103] Cline Piano Co. v. Sherwood, 57 Wash. 239, 106 Pac. 742 (1910). (The suit was unsuccessful, not because the attorney had no right to so proceed, but because the court found that the attorney had not perfected his lien.) See also, Humptulips Driving Co. v. Cross, 65 Wash. 636, 18 Pac. 827 (1911).

5. the attorney may file a petition in a probate proceeding asking for protection of his claim to compensation, have his attorney's lien determined, the amount of his fee fixed, and get an order of payment, as part of the distribution of the estate.[104]

6. an attorney has no cause of action against the adverse party who has paid the client, a known insolvent, even though such party had actual (written) notice of the attorney's claim of lien. The court assumes, however, that the attorney would have had a good cause of action if he had had a lien.[105]

7. a federal case out of Washington State has held that an attorney with a perfected lien may by petition get an order from the court directing payment of his fee from money paid into court pursuant to a judgment in the federal court in a condemnation proceeding.[106]

8. an attorney will be permitted to intervene to protect his perfected lien.[107]

Rights of the Client or Third Person

RCW 60.40.020 **Proceeding to compel delivery of money or papers.** If an attorney refuses to deliver money or papers to a person from or for whom he has received them in the course of professional employment, he may be required by an order of the court in which an action, if any, was prosecuted, or if no action was prosecuted, by order of a judge of a court of record, to do so within a specified time, or show cause why he should not be punished for a contempt.

RCW 60.40.030 **Procedure when lien is claimed.** If the attorney claims a lien upon the money or papers, the court or judge may:

(1) Impose as a condition of making the order that the client give security, in the form and amount to be directed, to satisfy the lien, when determined in an action;

(2) Summarily inquire into the facts on which the claim of a lien is founded, and determine them; or

(3) Refer it, and upon the report, determine the facts as in other cases.

The Washington Supreme Court has held that under these provisions the client is entitled to have the court summarily determine the amount of the lien and fix the amount of the bond to be given to secure the attorney's claim for fees, and, upon filing such bond, to the immediate return of his property.[108]

[104] *In re* Estate of Wren, 163 Wash. 65, 299 Pac. 972 (1931).
[105] Plummer v. Great Northern Ry Co., 60 Wash. 214, 110 Pac. 989 (1910).
[106] United States v. Moulton and Powell, 188 F.2d 865 (9th Cir. 1951).
[107] Spokane Security Finance Co. v. Bevan, 172 Wash. 418, 20 P.2d 31 (1933).
[108] *In re* 8th Avenue, 82 Wash. 398, 144 Pac. 533 (1914); State v. Gilliam, 94 Wash. 243, 161 Pac. 1194 (1917). See also, State *ex rel.* Trumble and Plumley v. Sachs, 3 Wash. 371, 28 Pac. 540 (1891).

These statutes do not apply to property delivered (pledged) to the attorney as security for his fees.[109]

The Washington Supreme Court has ruled that the summary method of procedure provided by these sections of the statute is not exclusive.[110] Thus, actions have been brought by clients and interested third parties to restrain execution by the attorney;[111] to recover money retained by the attorney under claim of lien;[112] to have an attorney's lien set aside;[113] and by way of interpleader.[114]

Right to Trial by Jury

The Washington Supreme Court has ruled that there is no right to trial by jury when the issue involves a lien for attorney's fees, since this is a matter of equitable cognizance.[115]

Lien on Judgments in the Federal Courts in Washington

There is no federal attorney's lien act. Efforts to enact such a statute thus far have failed.[116] However, Washington attorneys trying cases in the federal district courts in Washington are protected to the extent of the state statute above discussed. The Court of Appeals for the Ninth Circuit has ruled that,

> It appears to be the settled rule that judgments rendered in federal courts in states where such charging liens are recognized by statute or local law, will be held subject to such liens.[117]

Conclusions

It is quite apparent from the above discussion that the attorney's lien statute is inadequate. It should also be apparent that the defects are such that correction should come through legislation rather than

[109] Golden v. Hyde, 117 Wash. 677, 202 Pac. 272 (1921).
[110] Jensen V. Kohler, 93 Wash. 8, 159 Pac. 978 (1916).
[111] Cline Piano Co. v. Sherwood, 57 Wash. 239, 106 Pac. 742 (1910) (by judgment debtor); Holbrook v. McKee, 147 Wash. 386, 266 Pac. 187 (1928) (by judgment debtor); Humptulips Driving Co. v. Cross, 65 Wash. 636, 118 Pac. 827 (1911) (by judgment debtor).
[112] Jensen v. Kohler, 93 Wash. 8, 159 Pac. 978 (1916) (by trustee of corporation which had been defendant's client); Price v. Chambers, 148 Wash. 170, 268 Pac. 143 (1928) (by client).
[113] State *ex rel.* Angeles B. & M. Co. v. Superior Court, 89 Wash. 342, 154 Pac. 603 (1916) (by client).
[114] Niagara Fire Ins. Co. v. Hart, 13 Wash. 651, 43 Pac. 937 (1896) (by judgment debtor).
[115] Hudson v. Brown, 179 Wash. 32, 35 P.2d 756 (1934); *In re* the Estate of Wren, 163 Wash. 65, 299 Pac. 972 (1931); Price v. Chambers, 148 Wash. 170, 268 Pac. 143 (1928).
[116] See, R. Berger, *Attorney's Lien in federal courts: A protection that is long overdue*, 39 A.B.A.J. 131 (Feb. 1953).
[117] United States v. Moulton and Powell, 188 F.2d 865 (9th Cir. 1951).

judicial interpretation and interpolation. The proposed act, appended hereto, is merely a suggestion—a start. It is hoped that interested bar associations will appoint committees to prepare a statute suited to the local needs.

Finally, much of this discussion has been concerned with the plaintiff's attorney's right to a lien. But what of defendant's lawyer?

DEFENDANT'S ATTORNEY—RIGHT TO LIEN

It is, and has been, assumed that the defendant's attorney has the same right as the plaintiff's lawyer to a lien on papers, money, or, where permitted, property, which have come into his possession. But, what about his right to claim a lien where he has successfully defended a law suit? A number of the states have provided for a lien for the defense attorney where he has filed a counterclaim.[118] But, only two states have made a statutory effort to provide the defendant's attorney with a charging lien—Georgia, where the attorney has successfully defended in an action to recover real or personal property;[119] and Louisiana, which provides:

> A special privilege is hereby granted to attorneys at law for the amount of their professional fees on all judgments obtained by them, and on the property recovered thereby, either as plaintiff or defendant, to take rank as a first privilege thereon.[120]

A PROPOSED ATTORNEY'S LIEN STATUTE

Attorney's Liens: Extent, Notice, Priority, Enforcement and Release

A. **Extent:** An attorney has a lien for the general balance of all compensation due him from his client, for professional services to such client whether specially agreed upon or implied, as provided in this section:

(1) Upon all papers, personal property and money of his client in his possession;

(2) Upon any claim, cause of action or defense placed in the attorney's hands, which shall attach to a verdict, report, determination, decision, judgment, decree or final order in his client's favor of any court, or, of any state, municipal, federal or other governmental agency, and to any money or property, real or personal, which may be recovered, or cleared,

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[118] Idaho, Sec. 3-205; Mo., Sec. 484-130; Mont., Sec. 93-2120; Nev., Sec. 8923; N.Y., Sec. 475; Okla., Title 5, Sec. 6; and Utah, Sec. 78-51-41.

[119] Ga., Sec. 9-613 (5).

[120] La., Sec. 9:5001.

as a result of such claim, cause of action or defense, no matter in whose hands (including governmental agencies) such money or property, real or personal, may be; provided however, that this section shall not apply where the money or property involved is specifically excepted from claims or liens by law.

B. **Notice sufficient to create the lien; parties affected:**
   (1) Possession of papers, personal property or money by the attorney shall be sufficient notice to create the lien as against all the world.
   (2) Notice, in writing, to the adverse party or, where the adverse party is represented by counsel, to his attorney, that the attorney has been retained with respect to a particular claim, cause of action or defense, shall be sufficient to create the lien as to the adverse party and his assignees, and no further or additional notice shall be required.
   (3) The commencement of an action, suit, proceeding or hearing on the claim or cause of action or the filing of a defense thereto, in a court or before any state, municipal, federal or other governmental agency, shall be deemed sufficient notice to create the lien as against all the world, and no further or additional notice shall be required.

C. **Priority:** When the lien provided in section A attaches by virtue of section B, it shall be superior
   (1) to all other liens, except tax liens and liens of record properly perfected prior thereto, and
   (2) to any settlement or assignment by or between the parties or third persons, or any of them, made thereafter.

D. **Enforcement and Release of Lien:** The Superior Court, upon petition of an attorney claiming a lien, or of the client or an interested third party contesting the amount or validity of a claim of lien, may proceed summarily, without a jury, on not less than five day's notice to interested parties, to adjudicate the rights of the parties involved on the issues raised, and enforce, continue, or release such lien on such terms and conditions as justice may require.