

THE MOORE LAW FIRM



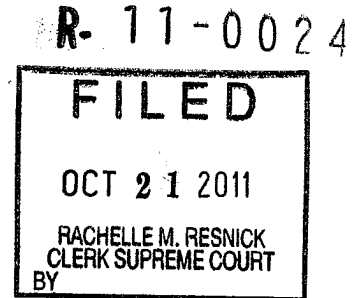
October 20, 2011

RECEIVED
OCT 21 2011
CLERK SUPREME COURT

Clerk of the Supreme Court
1501 W. Washington Street, Room 402
Phoenix, Arizona 85007

Re: Rule Comment

To Whom It May Concern:



I have read the proposed change to ER 1.15 authored by Mr. Trachtenberg and Mr. Abney. It concisely outlines a major dilemma in personal injury lawsuits where the claimant is represented by counsel. I encourage the Committee to adopt the proposed rule change.

As a plaintiff personal injury lawyer, over the past few years I have been required to expend more and more of my time and client funds addressing lien assertions by third parties. Some of those lien assertions have merit. Unfortunately, many times they do not. In those situations where there is a lack of merit, because of the fear that the unmeritorious lien claimant may accuse me of not properly fulfilling my ethical duties under Rule 1.15, I am forced to withhold my client's funds pending some sort of resolution with the unmeritorious lien claimant. In other words, the client's money is oftentimes held hostage because of my ethical duties. Had my clients not retained an attorney, they would have immediate access to their funds.

Not only is it unfair to allow unmeritorious lien claimants to take advantage of my ethical duties with impunity, it is unfair to force an injury victim's attorney, i.e., me, to file a lawsuit against the unmeritorious lien claimant to have the lien declared unenforceable or illegal. That improperly places the burden to disprove the validity of the lien upon the injury victim, instead of the party claiming the unmeritorious lien. The burden should be on the lien claimant to prove that it has a right to the injury victim's funds.

Giving a lien claimant 30 days to file an action to enforce its alleged lien will stop unmeritorious lien claimants from extorting money from injury victim's, while preserving the lien claimant's right to pursue a lien in those instances where the lien claimant believes there is a material dispute to the propriety of the lien.

In conclusion, the proposed rule change set forth by Mr. Trachtenberg and Mr. Abney seeks to equitably place the burden of proving a lien claim upon the lien claimant. No longer will it be permissible for unmeritorious lien claimants to hold an injury victim's funds hostage because the injury victim retained counsel.

The proposed change to ER 1.15 should be adopted in full.

Sincerely,

THE MOORE LAW FIRM

A handwritten signature in black ink, appearing to read "Darren M. Clausen". The signature is fluid and cursive, with a large initial "D" and "C".

Darren M. Clausen, Esq.

DMC/gms