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OCT 25 2011 A PROFESSIONAL ASSOCIATION OF LAWYERS

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October 25, 2011

Clerk of Court  
ARIZONA SUPREME COURT  
1501 West Washington St., Room 402  
Phoenix, Arizona 85007

FILED  
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RACHELLE M. RESNICK  
CLERK SUPREME COURT  
BY

Re: Comment to Petition R-11-0024 Regarding Ethical Rule 1.15

Dear Justices:

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

As plaintiff personal injury lawyers, over the past few years we have been required to expend more and more of our 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 us of not properly fulfilling our ethical duties under Rule 1.15, we are forced to withhold our 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 our ethical duties. Had our 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 our ethical duties with impunity, it is unfair to force us, as the an injury victim's attorneys, 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 victims, while preserving the lien claimant's right to pursue a lien in those instances where the lien claimant believes there is a material dispute as to the propriety of the lien.

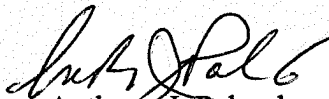
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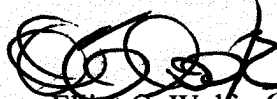
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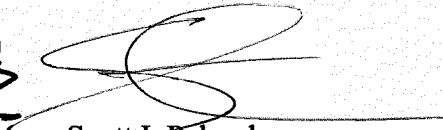
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In conclusion, the proposed rule change set forth by Mr. Trachtenberg and Mr. Abney seeks to equitably place the burden of proving a lien claim upon the lien claimant. No longer will it be permissible for unmeritorious lien claimants to hold an injury victim's funds hostage because the injury victim retained counsel. The proposed change to ER 1.15 should be adopted in full.

Sincerely,

  
Anthony J. Palumbo

  
Elliot G. Wolfe

  
Scott I. Palumbo

SIP/slh

cc: Geoff Trachtenberg, Esq.