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October 26, 2011

R- 11-0024

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

Re: Rule Comment R-11-0024

To Whom It May Concern:

**FILED**  
OCT 27 2011  
RACHELLE M. RESNICK  
CLERK SUPREME COURT  
BY

I have read the proposed change to ER 1.15 authored by Mr. Abney and Mr. Trachtenberg. The proposed rule addresses a significant problem I have faced repeatedly in representing personal injury plaintiffs. I am writing to support the adoption of the proposed rule change.

Over the past ten years or so more and more of my time has been taken up addressing lien issues raised by third parties. The last time I counted I came up with thirteen separate and distinct state or federal law lien issues. It is not uncommon for a claim of lien to lack merit. While in some situations I deal directly with a lien claimant, more frequently I am faced with an employee of a collection agency that really does not care whether the lien is supportable under the applicable law. The collection agency gets paid a percentage of every dollar they collect regardless whether there was a valid lien. Those attempting to collect money through unmeritorious lien claims may attempt to influence the result by threatening to make accusations of ethical violations under Rule 1.15. My client is denied his or her funds pending resolution of the matter with the unmeritorious lien claimant. If some sort of court action is required, my client's funds are depleted to some extent by the filing fee.

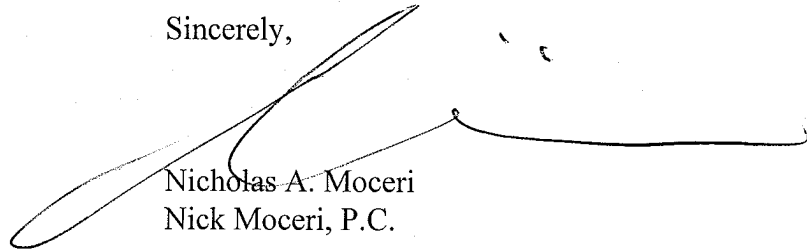
Clients that are not represented by counsel do not face a similar situation. Those claimants received their funds and have them available while they try to deal with the lien claimant. Rule 1.15 as currently written gives the unmeritorious lien claimants one more arrow in their quivers with which to try to obtain funds to which they are not entitled. Forcing the injured party's attorney to file a lawsuit to dispute a lien, no matter how obviously unmeritorious, seems to me to be an unfair shifting of the burden of proof and the burden of going forward with the evidence. The injured person is forced to allege and prove that the lien is not valid rather than requiring the debt collector to prove the validity of its claim. The burden of proof should be on the lien claimant who is claiming a right to the client's funds.

The remedy proposed by Mr. Abney and Mr. Trachtenberg, giving a lien claimant thirty days to file an action in court to enforce its alleged lien, will prevent claimants of unsupported liens from using leverage to obtain money from injury victims. At the same time, the lien claimant's right

to pursue the lien is preserved in those cases where the lien claimant believes in the validity of its lien. Such is the situation that exists where injured persons are not represented by counsel. It is no burden on lien claimants to require that they approach represented injury victims in the same way.

The proposed rule change seems to this writer to be more equitable than the present situation. It would have the added benefits of increasing efficiency, reducing conflicts between counsel and client regarding the withheld funds, and generally reducing, to some small extent, the tremendous burden that has been placed on counsel for injured persons dealing with those lien claimants who desire to use plaintiff's counsel as a debt collector against his or her own client. The proposed change to ER 1.15 should be adopted in full.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas A. Mocerri", with a long horizontal flourish extending to the right.

Nicholas A. Mocerri  
Nick Mocerri, P.C.

NAM/clr