



“If you plan on asserting a charging lien, make sure to do so while there are still monies to recover.”

Practice Tips

GLENN MACHADO, ASSISTANT BAR COUNSEL

RECENT UPDATES ON CHARGING LIENS AND RETAINING LIENS

Nevada Revised Statute (NRS) 18.015 was recently amended to address retaining liens. The revisions took effect July 1, 2013.

The prior version of NRS 18.015 only addressed “charging” liens. In *Argentena Consol. Mining Co. v. Jolley Uрга Wirth Woodbury & Standish*,¹ the Nevada Supreme Court noted that there were two kinds of attorney’s liens in existence. The first, a creature of statute, is “a special or charging lien on the judgment or settlement [that] the attorney has obtained for the client.” *Argentena* 125 Nev. at 531-532, 216 P.3d at 782. The second, established at common law, is a general or retaining lien, that allows a discharged attorney to withhold the client’s file and other property until the court, at the request or consent of the client, adjudicates the client’s rights and obligations with respect to the lien. *Argentena* 125 Nev. at 532, 216 P.3d at 782.

The district court’s jurisdiction over these two liens arises, however, in distinctive manners. *Id.*

In regard to charging liens, the district court’s in personam jurisdiction to adjudicate a fee dispute based on a charging lien is derived from the fact that the client has already submitted himself or herself to the court’s jurisdiction and the court has personal jurisdiction over the attorney due to the attorney’s appearance as the client’s counsel of record. *Argentena* 125 Nev. at 532, 216 P.3d at 782-783. Concerning the court’s subject matter jurisdiction, the court has in rem jurisdiction to resolve a fee dispute between an attorney and client, which arises from a charging lien, because the attorney’s fee “is recovered on account of the suit or other action.” *Argentena* 125 Nev. at 532, 216 P.3d at 783.

Regarding the district court’s jurisdiction to adjudicate a fee dispute based on a retaining lien, this court has previously held that a retaining lien is a passive lien that cannot be actively enforced by the attorney in judicial proceedings. *Argentena* 125 Nev. at 533, 216 P.3d at 783. Thus, the attorney had no mechanism through which to get the retaining lien adjudicated; only the former client had the ability to do so. The new version of NRS 18.015 addresses this issue.

The revised NRS 18.015(1)(b) specifically gives attorneys the ability to assert retaining liens in a civil action, with the lien

attaching “upon any file or other property properly left in the possession of the attorney by a client.” NRS 18.015(6) now allows attorneys to seek adjudication of the retaining lien after five days’ notice has been given to all interested parties.

However, the attorney must now serve written notice of the retaining lien to the client in person or by certified mail, return receipt requested, pursuant to NRS 18.015(3). The common law retaining lien was a passive lien; essentially the attorney held on to the file, and that was how the retaining lien became effectuated.

Recent Case Law Regarding Charging Liens

A charging lien only attaches to monies recovered from the time of service of the motion. *See* NRS 18.015(4). The Nevada Supreme Court recently stated as much in *Leventhal v. Black & Lobello*, 129 Nev. ___, Advance Opinion 50 (Case No. 58055, July 11, 2013). In *Leventhal*, the attorney served notice of the charging lien for unpaid fees incurred in the post-decree portion of a family law case (which apparently settled). The Nevada Supreme Court reversed the district court’s adjudication of the lien, stating “that under NRS 18.015(3), the lien attaches to a judgment, verdict, or decree entered, or to money or property recovered, *after* the notice is served. This interpretation harmonizes NRS 18.015(3)’s attachment provisions with NRS 18.015(2)’s requirement that a lien be perfected by proper notice.” *Leventhal* at 4. Essentially, since the case was over, there were no funds to which the lien could attach.

The *Leventhal* opinion noted that the appeal was governed by the pre-amendment version of NRS 18.015. However, the pre-amendment version of NRS 18.015(2) and (3) were not materially revised in regard to the Supreme Court’s interpretation of charging liens.

So, if you plan on asserting a retaining lien in the future, make sure it complies with NRS 18.015. If you plan on asserting a charging lien, make sure to do so while there are still monies to recover. ■

1. 125 Nev. 527, 216 P.3d 779 (2009).