

A legal note from Marshal Willick about actually getting paid through an attorney's lien after *Argentina*

In *Argentina v. Jolley Uрга*, 125 Nev. ___, ___ P.3d ___ (Adv. Opn. No. 40, Sept. 24, 2009), the Nevada Supreme Court effectively made it more difficult for attorneys to collect on either retaining or charging liens. The primary holding of the case was that in the absence of an enforceable charging lien, a client's request to liquidate a retaining lien, or a client's consent to the district court's adjudication of a retaining lien, the district court lacks jurisdiction to adjudicate an attorney/client dispute as to fees owed.

Partially overruling precedent from the past 50 years, the Court found that no valid charging lien could be applied when no recovery was obtained for the client (as when the client's case was purely defensive, and no money judgment was obtained from the opponent). Further, the Court found that any summary adjudication would be reversible error in the absence of a "basis for its decision in awarding the fees" as to reasonableness of the fees charged in light of the factors recited in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) and *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005). Finally, the Court found that the summary adjudication process would be entirely improper if a malpractice claim was pending by the client.

Reader plvlaw1 has written in, asking:

If we adjusted our retainer agreement to include language that we can pursue judgment of a lien through the case for which we are retained, will that be adequate to allow pursuit of the judgment without the necessity of filing an independent action?

The answer is "yes," but altering the retainer agreement is not enough to cope with all that *Argentina* requires. In addition to two changes to a standard retainer agreement, a motion seeking adjudication of an attorney's lien, and the resulting order, are now required to be much more detailed.

The two necessary changes to retainer agreements should include, immediately below the recitation of the firm's fee schedule, words to the effect:

Client agrees that these fees are reasonable on the basis of Attorney's ability, training, education, experience, professional standing and skill, and the difficulty, intricacy, importance, and time and skill required to perform the work to be done.

This term mirrors the necessary considerations of an attorney's fee award under *Brunzell* and *Wilfong*.

In addition, every retainer agreement should have a section as to liens and adjudication. Our model language reads:

Client hereby grants Attorney a lien on any and all claims or causes of action that are related to the subject of Attorney's representation under this Agreement. Attorney's lien will be for any sums due and owing to Attorney at the conclusion of Attorney's services. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement, or otherwise. Any amounts received by

Attorney's office on Client's behalf may be used to pay Client's account.

Attorney will retain possession of Client's file and all information therein until full payment of all costs, expenses, and fees for legal services, subject to turnover or destruction of the file as set out in Paragraph 9. Client consents to the district court's adjudication of any such lien in the underlying action without requiring the filing of a separate action.

And since an adjudication would be reversible without findings under those cases, any motion for adjudication should make representations as to the required factors, and any order adjudicating a lien should include findings, as to:

1. *The Qualities of the Advocate:*
2. *The Character of the Work to Be Done:*
3. *The Work Actually Performed by the Lawyer:*
4. *The Result:*

Finally, there is language within *Argentea* indicating that if the client wishes to assert a malpractice claim against an attorney, the summary adjudication procedure is not available. Another reader has asked why that could not be made a matter of contract, as well.

Presuming it's allowable, such an adjustment would further modify the sentence in the "Liens and Adjudications" section of a retainer agreement to read:

"Client consents to the district court's adjudication of any such lien in the underlying action without requiring the filing of a separate action, regardless of whether any other action might be or has been filed by either Attorney or Client against the other, including any action alleging malpractice."

Such a modification warrants a clear and strongly-worded warning, usually at the end of the agreement:

"This Agreement is a formal legal contract for Attorney's services. It protects both you and your attorney, is intended to prevent misunderstandings, and it may vary the law otherwise applicable to attorney's liens and resolution of fee disputes. **DO NOT SIGN THIS AGREEMENT UNTIL YOU HAVE READ IT THOROUGHLY AND ARE SURE YOU UNDERSTAND ITS TERMS.** If you do not understand it or if it does not contain all the agreements discussed, please call it to our attention and be sure this written Agreement contains **all** terms you believe are in effect between us. You have an absolute right to discuss this agreement with independent counsel (or any other advisor) before entering into this agreement, and we encourage you to do so.

All of this extra work is a burden, but it is still a lot faster, easier, and cheaper than filing a separate action for recovery against a client, and therefore actually in the interest of both attorney and client so that any disputes as to fees owed can be expeditiously, efficiently, and economically resolved.

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various materials relating to attorney's fees and costs, go to http://www.willicklawgroup.com/fees_and_costs.

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