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**Jacobson v. INC Research LLC:
Court Allows Supplemental Proceeding to Enforce Attorney Lien**

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Although attorney liens have existed in statutory form in Washington since 1863, they remain a comparatively “underdeveloped” remedy for lawyers pursuing payment. In particular, the lien statute—RCW 60.40.010—does not include a specific procedure for foreclosing a lien. The federal district court in Seattle recently provided an illustration of one potential avenue: a supplemental proceeding within the case creating the lien.

Jacobson v. INC Research LLC, No. 2:13-cv-01519-JCC, 2015 WL 852608 (W.D. Wash. Feb. 24, 2015) (unpublished), was an ERISA claim by plaintiff against her former employer and its insurer. The parties reached a settlement and reported it to the court. Later, plaintiff told her lawyer—who had the case on a contingent fee—that she would not pay the fees owed. At that point, the lawyer filed a lien notice with the court. The defendants deposited that disputed portion of the settlement into the court and were dismissed. The lawyer then moved to enforce the lien through a supplemental proceeding.

The court agreed, relying on *King County v. Seawest Inv. Associates, LLC*, 141 Wn. App. 304, 315, 170 P.3d 53 (2007), in which the Court of Appeals noted that courts have broad latitude to fashion remedies for lien enforcement in light of the ambiguity in the statute itself. The court also invoked ancillary federal

jurisdiction to retain the case. The court found that the lawyer had substantially performed the agreed services under the contingent fee contract and enforced the lien based on the contingent fee due. Because the defendants had paid the disputed portion of the settlement into the court, the court, in turn, directed the clerk to disburse the funds to the lawyer.

Jacobson will not be a perfect solution in every circumstance. But, for lawyers whose work has created a defined fund in a litigation context, enforcing the lien in the same proceeding will often be the simplest route.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP focuses on legal ethics, product liability defense and condemnation litigation. In his legal ethics practice, Mark handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers, law firms and legal departments throughout the Northwest. He is a past member of the Oregon State Bar's Legal Ethics Committee, has chaired both the Washington State Bar Committee on Professional Ethics and its predecessor, the Rules of Professional Conduct Committee, is a member of the Idaho State Bar Professionalism & Ethics Section and is a co-editor of the OSB's Ethical Oregon Lawyer and the WSBA's Legal Ethics Deskbook. Mark also writes the monthly Ethics Focus column for the Multnomah (Portland) Bar's Multnomah Lawyer, the quarterly Ethics & the Law column for the WSBA NWLawyer (formerly Bar News) and is a

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