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## **Court of Appeals Interprets “Proceeds” Attached by Attorney Lien in Dissolution Case**

**By Mark J. Fucile**  
**Fucile & Reising LLP**

Division I of the Washington Court of Appeals recently interpreted the term “proceeds” to which an attorney lien attached in a dissolution case. *Matter of Marriage of Shulikov*, 2017 WL 3476783 (Wn. App. Aug. 14, 2017) (unpublished), involved a dissolution case that had settled at the trial court level. The resolution involved payments of maintenance and child support by the husband to the wife and a separate property settlement under which the husband made monthly payments to the wife to buy the wife’s share of the couple’s business. The wife’s attorney withdrew following the resolution and filed a lien for fees. In light of the lien, the husband paid the amounts due under the property settlement into the court. Represented by new counsel, the wife challenged her former lawyer’s lien over the funds the husband had deposited into the court. The trial court concluded that the funds involved were not subject to the lien. The Court of Appeals, however, concluded that the property settlement funds were “proceeds” capable of being attached by the lien and reversed.

RCW 60.40.010(1)(d) creates a “charging” lien over “an action . . . and its proceeds after the commencement thereof to the extent of the value of any services performed by the attorney in the action[.]” RCW 60.40.010(5), in turn,

defines “proceeds” in this context as “any monetary sum received in the action.” Child support is excluded from such liens by RCW 60.40.010(6). The lien at issue in *Shulikov*, however, was directed toward the separate property settlement funds rather than the child support. Under *King County v. Seawest Inv. Associates, LLC*, 141 Wn. App. 304, 313-17, 170 P.3d 53 (2007), a lien of this kind may be enforced either through a separate action or in the proceeding that generated the funds involved.

The wife in *Shulikov* argued that the funds from the property settlement were not “proceeds” because they essentially represented a return of capital on property she owned jointly with her former husband. The Court of Appeals, however, reasoned that the statute did not make that fine a distinction—holding that “the payments on the property distribution constitute proceeds, because they are monetary sums received in the action.” 2017 WL 3476783 at \*6. The Court of Appeals, therefore, remanded the case to the trial court to determine the amount due under the lien.

## ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP handles professional responsibility, regulatory and attorney-client privilege issues for lawyers, law firms and corporate and governmental legal departments throughout the Northwest. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark is also a former member of the Oregon State Bar Legal Ethics Committee and is a current member of the Idaho State Bar Section on Professionalism & Ethics. Mark writes the monthly Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the quarterly Ethics & the Law column for the WSBA *NWLawyer* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is a contributing author/editor for the current editions of the OSB *Ethical Oregon Lawyer*, the WSBA *Legal Ethics Deskbook* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.