

## **What's a Lawyer to Do When a Client Receives the Benefit of Their Legal Services and Then Refuses to Pay?**

By Camille J. Iurillo and Gina M. Pellegrino

Scenario: It's every lawyer's worst nightmare...you initially meet with the client, you have the client sign a fee agreement, you advise the client of their various legal alternatives based on the law and the facts of their case, you zealously represent the client based on their decision to proceed; as a result of your hard work, the client obtains a favorable result in their case and then the client chooses not to pay your attorney's fees and costs. It's at this point that the lawyer must decide what, if any, action to take to recover their fees and costs. The lawyer may decide to do nothing or the lawyer may attempt to collect their fees and costs from the funds recovered for the client in the case. How does the lawyer go about doing this? Can the lawyer also recover their fees and costs incurred during the collection process?

Generally speaking, in Florida, a charging lien is an alternative for a lawyer's efforts to recover their fees and costs out of the client's recovery in a specific legal proceeding. However, the Supreme Court of Florida has set forth numerous requirements in order for a valid charging lien to be imposed: 1) there must be an express or implied contract between the lawyer and the client; 2) there must be an express or implied understanding for payment of the lawyer's fees out of the client's recovery; 3) there must be either an avoidance of payment on the part of the client or a dispute as to the amount of fees; and 4) the lawyer must give timely notice of the charging lien. *See, Daniel Mones, P.A. v. Smith*, 486 So.2d 559, 561 (Fla. 1986). In addition, according to the applicable case law, it is important for the lawyer to provide notice of their charging lien before the client's case has been reduced to a judgment or dismissed due to settlement. *See, Levine v. Gonzalez*, 901 So.2d 969 (Fla. 4<sup>th</sup> DCA 2005).

With respect to the lawyer's recovery of their fees and costs incurred during the collection process, the right to obtain these fees and costs is a matter of state law, but in a bankruptcy case, the amount to be recovered is determined by the bankruptcy court. *See, In re Dawson*, 32 B.R. 179, 180 (Bankr. W.D. Mo. 1983). Some bankruptcy courts have stated that in order for a lawyer to obtain their fees and costs for their collection efforts, this must be specifically provided for in the fee agreement executed by the client. *See, In re Tolan*, 41 B.R. 751, 753 (Bankr. M.D. Tenn. 1984). Although, this is probably not the only way for a lawyer to collect their fees and costs incurred during the collection process, there is case law that indicates that when the language of a fee agreement is clear, specifically providing for a lawyer's recovery of their collection efforts, a court may award such fees and costs, holding that the intent of the parties is set forth in the fee agreement. *See, Gossett v. Gossett, P.A. v. Mervolion*, 941 So.2d 1207, 1209-10 (Fla. 4<sup>th</sup> DCA 2006).

In conclusion, when a lawyer is faced with a client that is unwilling to pay after the client has received the benefit of the lawyer's legal services, the lawyer must first decide whether it is the right decision to seek their fees and costs from the client's recovery. The lawyer then has the option of obtaining a charging lien provided that the four requirements as set forth by the Supreme Court of Florida are satisfied. Thereafter, the lawyer must determine whether they have a right, under state law, to collect their fees and costs incurred during the collection process.

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The primary areas of practice of **Iurillo & Associates, P.A.** are Commercial and Bankruptcy Litigation and Debtors'/Creditors' Rights.