

INFORMATIONAL – NO FORMAL COMMITTEE VOTE TAKEN

INQUIRY #1984-5/15 ATTORNEYS' LIENS

Historically, there have been two types of liens which an attorney was entitled to impose on his or her client's property. The first is the so-called charging lien. This lien is usually embodied in a state statute. Such is the case in New Hampshire. RSA 311:13, which is referred to in the February 1982, opinion of this committee, allows an attorney to employ such a lien in applicable situations. The statute provides for the imposition of a lien for reasonable attorneys' fees and costs on a verdict or judgment decree of the Court.

The other kind of lien is known as a retaining lien. This device enables an attorney to retain a client's property and/or the file pending the payment of the fee or the posting of sufficient security for payment. See, attached excerpts from ABA/BNA Lawyers' Manual on Professional Conduct, Section 41:4101 et seq. This lien appears to have developed through the common law, although some states have specific statutory procedures for its use.

The applicable provisions of the New Hampshire Code of Professional Responsibility are cited in the committee's prior opinion. Similar rules are contained in the Proposed New Hampshire Rules of Professional Conduct. See, Rule 1.5 regarding fees and Rule 1.8, Conflict of Interest, Prohibited Transactions. The latter provides, in pertinent part, that

(1)A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(a) Acquire a lien granted by law to secure the lawyer's fee or expenses; (Emphasis Added)

I found no authority in New Hampshire for the imposition of a retaining lien. I respectfully suggest that the issue is a legal matter and not within the province of this committee to determine. In the absence of some clear statutory or case law authority for the imposition of such a lien, the prior decision should not be reversed. One alternative may be to request an advisory opinion from the New Hampshire Supreme Court which may find some precedent for the establishment of a retaining lien.