THE SUPREME COURT
OF THE STATE OF WASHINGTON

Supreme Court No. 1036469
Court of Appeal No. 86038-1

In re the Estate of:

HEIDEMARIE STAAB, a/k/a
HEIDEMARIE LISELOTTE STAAB,

Deceased.

KEOKI STAAB,

v.

HOLGER SIEGWART, in his capacity as the Personal Representative to the ESTATE OF HEIDEMARIE STAAB, a/k/a HEIDEMARIE LISELOTTE STAAB and THOMAS BRAUSSE,

---

PETITION FOR REVIEW

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I.
IDENTITY OF PETITIONER

Jackson Law International ("JLI") petitions for discretionary review of the decision below.

II.
CITATION TO COURT OF APPEALS DECISION

Petitioner seeks review of the Unpublished Opinion of the Court of Appeals, *Keoki Staab v. Holger Siegwart et al.*, No. 86038-1-I, 2024 WL 4262980 (Wash. Ct. App. Sept. 23, 2024) ("Opinion").

III.
ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals engage in obvious error by failing to consider that an *ex parte* show cause hearing under RCW 60.40.20 is not available to adjudicate a charging lien?

2. Did the Court of Appeals engage in obvious error by failing to consider that a summary proceeding under RCW 60.40.030 is not available to adjudicate a charging lien?

3. Did the Court of Appeals engage in obvious error by applying a "frivolous" standard to the attorney lien statute.

4. Was Petitioner deprived of due process by the commissioner adjudicating a charging lien via summary proceeding at a show cause hearing?

5. Was Petitioner deprived of due process when the commissioner refused to allow live testimony and documentary evidence in support of the charging lien?

IV.
STATEMENT OF THE CASE

This appeal turns on the procedurally flawed process utilized by a commissioner at a show cause hearing to release an attorney's charging lien. CP at 88. This error presents the Court with a constitutional due process violation under the Fourteenth Amendment of the United States Constitution concerning the deprivation of JLI's substantial property rights. *See* U.S. Const. amend. XIV, § 1.

The commissioner invalidated a charging lien attached to mediation settlement proceeds under RCW 60.40.010 of the attorney lien statute, by (1) utilizing a procedural mechanism not authorized for adjudicating charging liens; (2) applying a "frivolous" standard not delineated within the plain meaning of

the statute to substantiate a fee award; and (3) failing to provide notice and opportunity to be heard before depriving Petitioner of substantial property rights under its charging lien.

The charging lien arose through work performed by attorney, Michael R. Jackson ("Jackson") on behalf of Thomas Brausse ("Brausse"). CP at 46 (Decl. of Jackson at ¶70). Jackson is a licensed attorney in Germany and multiple U.S. jurisdictions. CP at 31-32 (Decl. of Jackson at ¶2-3). His native language is German, and the majority of JLI's clients are from German-speaking countries. CP at 32 (Decl. of Jackson at ¶4). Brausse, a German national, engaged JLI through a written fee agreement. CP at 15, 21 (Response); CP at 33-34 (Decl. of Jackson at ¶11-12). The scope of the engagement was to assist Brausse's Washington counsel, Hans Juhl ("Juhl") of Ryan, Swanson & Cleveland, PLLC ("RSC") in securing testimony of will witnesses and treating physicians and documentation located in Germany in exchange for an hourly fee. CP at 19-20 (Response); CP at 32-34 (Decl. of Jackson at ¶5, 11-12).

Through Jackson's assistance, Juhl secured a trial continuance, documents and testimony from witnesses in Germany, and a favorable mediation settlement. CP at 22 (Response); CP at 36-42 (Decl. of Jackson at ¶23-51). Undisputed is that the mediation settlement proceeds were and are being held by RSC. CP 4. The Court of Appeals noted that "[t]he matter eventually settled, and Ryan Swanson received the settlement proceeds." *See* Opinion. Thus, the settlement proceeds against which JLI asserted a lien are not and never have been in JLI's possession.

JLI's unpaid invoices relate to the months of February through November, 2022, CP at 18-19 (Response); CP at 46 (Decl. of Jackson at ¶70), and include payments to third parties that JLI advanced to Brausse. CP at 46 (Decl. of Jackson at ¶71). Consequently, JLI filed a Notice of Attorney's Lien on November 29, 2022. CP 1. Brausse filed a Motion for Order to Show Cause on August 18, 2023. CP 4.

This appeal addresses the faulty procedural mechanism relied upon below to order the release of the charging lien. At the outset, instead of filing a motion to adjudicate the lien's validity, which would be set for evidentiary hearing or trial, Brausse erroneously filed a Motion for Order to Show Cause, and the commissioner improperly proceeded on the show cause application. At the show cause hearing, the commissioner imposed a five-minute per side limitation for argument only before entering an order finding that the attorney lien was "frivolous." RP at 14.[1] The commissioner did not make factual findings or delineate the basis for his ruling. *Id.* at 13-14.

As outlined *infra*, a show cause hearing is not appropriate where an attorney has filed a charging lien. While summary proceedings are authorized under RCW 60.40.030 for possessory attorney liens, summary proceedings are not authorized for charging liens. In misapplying the statutory scheme governing

[1] Reference to the Verbatim Report of Proceedings shall be cited as "RP" followed by the page number.

attorney liens, JLI was deprived of an equitable evidentiary proceeding and due process, as delineated in multiple Washington Supreme Court and Court of Appeals decisions, and further violated JLI's due process rights under the Fourteenth Amendment of the United States Constitution.

V.
ARGUMENT

A. Criteria for discretionary review.

Pursuant to RAP 13.4, the Court should accept review of the issues presented because:

(1) the Court of Appeals decision is in conflict with a Supreme Court decision;

(2) the Court of Appeals decision is in conflict with published Court of Appeals decisions;

(3) a significant question of law under the Constitution of the United States is involved.

See RAP 13.4.

B. The Court of Appeals decision is in conflict with a Supreme Court decision.

The decision below relied heavily upon *King County v. Seawest Inv. Associates*, LLC, 141 Wash.App. 304, 314, 170 P.3d 53, 58 (2007), citing this Court's decision in *Angeles Brewing* for the proposition that "our supreme court placed the question of how to properly adjudicate an attorney's lien on a judgment squarely within the discretion of the trial court." *Seawest,* 141 Wash.App. at 317 (citing *State ex rel. Angeles Brewing & Malting Co. v. King County Superior Court*, 89 Wash. 342, 345, 154 P. 603 (1916)). However, the Court of Appeals overlooked critical language within *Angeles Brewing*, addressing a charging lien, wherein this Court stated that the "validity of such a lien, and the legality and justice of the claim, are questions which cannot in this instance be determined by a summary proceeding . . . ." *Angeles Brewing*, 89 Wash. at 346.

The Opinion recites that under *Angeles Brewing* a trial court has broad discretion in crafting the mechanism for

adjudicating an attorney lien's validity, while ignoring this Court's holding that a summary proceeding is not the mechanism for adjudicating charging liens. *Id.* This Court specifically noted in *Angeles Brewing* that "[n]o attempt is being made to foreclose the lien," and that a summary proceeding was not a means of bypassing an actual foreclosure upon a charging lien. *Id.* at 344.

Since *Angeles Brewing*, the legislature enacted RCW 60.40 *et seq*. The attorney lien statute codified *Angeles Brewing's* exclusion that bars courts from utilizing summary proceedings to adjudicate charging liens. *See* RCW 60.40 *et seq.*

The Opinion also conflicts with Washington Supreme Court and U.S. Supreme Court decisions examining due process rights, addressed below within the relevant section.

C. The Court of Appeals decision conflicts with published Court of Appeals decisions barring *ex parte* show cause hearings to adjudicate charging liens.

(1) RCW 60.40 *et seq.* is the statutory basis for JLI's lien.

JLI filed a charging lien under RCW 60.40.010 upon mediation settlement proceeds held by RSC. The statute provides that an attorney has a lien for compensation in the following circumstances:

> (a) Upon the papers of the client, which have come into the attorney's possession in the course of his or her professional employment;
>
> (b) Upon **money in the attorney's hands** belonging to the client;
>
> (c) Upon **money in the hands of the adverse party** . . . .;
>
> (d) Upon an action, including one pursued by arbitration or **mediation**, and its **proceeds** after the commencement thereof **to the extent of the value of any services performed by the attorney in the action** . . . .; and
>
> (e) Upon a judgment to the extent of the value of any services performed by the attorney in the action . . . .

RCW 60.40.010 (emphasis added). Brausse's Motion for Order to Show Cause moved for an order requiring JLI "to appear and show cause why settlement funds held by Ryan Swanson & Cleveland, PLLC should not be released to the rightful recipient." CP at 4-6. The motion recites that RSC "represented Brausse in the underlying action and is holding the Funds for his benefit." CP at 5. Undisputed is that JLI was not holding Brausse's money, nor was the adverse party. Thus, RCW 60.40.010(1)(b) and (c) do not apply. Similarly, Brausse conceded that the attorney lien could and did attach to mediation settlement proceeds. CP 71. Accordingly, any analysis begins with the unassailable premise that a charging lien was filed against mediation settlement proceeds under RCW 60.40.10(d).

(2) A court must give effect to the plain meaning of a statute.

Lien statutes are in derogation of common law; so, they must be strictly construed. *Pacific Industries, Inc. v. Singh*, 120 Wash.App. 1, 6, 86 P.3d 778, 781 (2003). The attorney lien

statute (RCW 60.40 *et seq*.) was the focus of the *Seawest* court. *Seawest*, 141 Wash.App. at 313. That court noted, "[o]ur fundamental objective in reading a statute is to ascertain and carry out the legislature's intent." *Id.* at 309. The court added, "[u]nder the plain meaning rule, such meaning is derived from all that the legislature has said in the statute and related statutes that disclose legislative intent about the provision in question." *Id.* Further, "[a] court should not adopt an interpretation that renders any portion meaningless." *Id.*

(3) The sole basis for a show cause order is found in RCW 60.40.020.

The *Seawest* court noted that the basis for securing a show cause order under the lien statute is RCW 60.40.020. *Id.* at 312. That section provides:

> When an attorney refuses to deliver over money . . . to a person from or for whom he or she has received them . . . he or she may be required by an order of the court . . . to do so . . . or show cause why he or she should not be punished for a contempt.

RCW 60.40.020. The statute addresses situations where an attorney refuses to deliver money to a person from or for whom the money was received. *Id.* Brausse could only move for an order to show cause against JLI if JLI held money received from Brausse that it was failing to return. RCW 60.40.020; *Seawest,* 141 Wash.App. at 312. However, the mediation proceeds were in the possession of RSC, not JLI.

(4) RCW 60.40.020 precluded the Court of Appeals from determining that a show cause motion and hearing were authorized.

Basic rules of statutory construction precluded the Court of Appeals from determining that a show cause motion and hearing could be applied against an attorney not asserting a possessory lien. RCW 60.40.020; *Seawest*, 141 Wash.App. at 309. By allowing the commissioner to proceed on a show cause hearing and disregard the requirement that the motion be directed to the attorney possessing the money, the Court of Appeals adopted an interpretation that (i) renders the plain language of RCW 60.40.020 meaningless and (ii) contradicts statutory

construction principles. *See* RCW 60.40.020; *see Seawest,* 141 Wash.App. at 309.

D. The Court of Appeals decision conflicts with published decisions barring summary proceedings under RCW 60.40.030 where the attorney lien attaches to mediation settlement proceeds under RCW 60.40.010(1)(d).

(1) RCW 60.40.030 must be read in conjunction with RCW 60.40.020.

The Court of Appeals notes that while the attorney lien statute "does not prescribe any particular procedure," for adjudicating an attorney lien, subsection (2) of RCW 60.40.030 "broadly authorizes courts to 'summarily' inquire into the facts on which a lien is founded and 'determine the same.'" *See* Opinion. The Opinion ignores the plain language of RCW 60.40.30, which provides:

> If, however, **the attorney claim a lien, upon the money or papers**, under the provisions of this chapter, the court or judge may . . . (2) summarily to inquire into the facts on which the claim of a lien is founded, and determine the same . . . .

RCW 60.40.30. This statute applies on its face to possessory liens arising under RCW 60.40.010(1)(a) & (b), i.e., those liens

"[u]pon the papers of the client" or "[u]pon money in the attorney's hands belonging to the client." However, JLI held no money belonging to Brausse and had not asserted a possessory lien.

Thus, on the face of the statute, RCW 60.40.030 could not serve as a basis for conducting a summary proceeding. RCW 60.40.030. The Opinion further directly conflicts with *Seawest*, which also held:

> We conclude that a fair reading of the attorney lien statute requires us to hold that the legislature intended the summary procedures set forth in RCW 60.40.030 to apply **only when RCW 60.40.020 applies**.

Seawest, 141 Wash.App. at 313 (emphasis added). Again, RCW 60.40.020 applies to situations "[w]hen an attorney refuses to deliver over money . . . to a person from or for whom he or she has received them . . . ." RCW 60.40.020. In *Seawest*, the lien was asserted against a judgment under RCW 60.40.010(1)(e), i.e., a charging lien. *Seawest,* 141 Wash.App. at 311. Since summary procedures under RCW 60.40.030 are only available to

courts when possessory liens are asserted, summary proceedings are not procedurally available to adjudicate charging liens. *Angeles Brewing*, 89 Wash. at 346; *Seawest*, 141 Wash.App. at 311-313.

(2) Summary proceedings under RCW 60.40.030 are not triggered by an attorney lien under RCW 60.40.010(1)(d).

JLI's lien was asserted against mediation settlement proceeds. *See* RCW 60.40.010(1)(d). Adjudicating JLI's lien via summary procedure is in direct conflict with *Seawest*, which, applying basic rules of statutory construction, held:

> [T]he words of these two sections [referring to RCW 60.40.020] indicate that **the procedures of RCW 60.40.030 are not available where the attorney claims a lien on something other than the money or papers of the client** . . . .

Id. at 311 (emphasis added). To reiterate, the "money" is the refusal of the attorney to deliver money received from or on behalf of the client to the client. RCW 60.40.020. Therefore, the "something" referenced in *Seawest* represents something other than what is found within RCW 60.40.010(1)(a)-(b). In *Seawest*,

the "something" was a judgment under RCW 60.40.010(1)(e); in the instant matter, that "something" are mediation settlement "proceeds" under RCW 60.40.010(1)(d) held by RSC.

RCW 60.40.010 defines proceeds for purposes of the statute as "any monetary sum received in the action." RCW 60.40.010(5). The Court of Appeals, however, used "money" and "proceeds" interchangeably, while overlooking the requirement that "money" – unlike "proceeds" – must be in the hands of the attorney asserting the lien. *See* RCW 60.40.020; *see* RCW 60.40.010(5). This approach fails to recognize the statutory distinction between possessory and charging liens. JLI did not place a lien against money belonging to Brausse in its possession (a possessory lien); it placed a lien upon mediation settlement proceeds in RSC's possession (a charging lien).

Thus, since "the legislature intended the summary procedures set forth in RCW 60.40.030 **to apply only** when RCW 60.40.020 applies," *Seawest,* 141 Wash.App. at 313 (emphasis added), and, further, RCW 60.40.020 applies "[w]hen

an attorney refuses to deliver over money or papers, to a person from or for whom he or she has received them," RCW 60.40.020, the summary procedure outlined in RCW 60.40.030 is not available to adjudicate the validity of charging liens. If under *Seawest* neither a show cause hearing nor a summary proceeding was authorized to adjudicate a lien upon a judgment under subsection (e), then neither were authorized to adjudicate a lien asserted under subsection (d) against mediation settlement proceeds.

The *Seawest* holding is echoed in *Glick v. McIlwain*, 154 Wash.App. 729, 733, 230 P.3d 167, 168 (2009) (holding a summary procedure is only available where the lien attaches to the papers or money in the possession of the attorney asserting the lien but not where it attaches to other types of attorney liens under RCW 60.40.010). On appeal, Brausse surprisingly relied upon *In Matter of Marriage of Shulikov*, No. 75266-9-I, 2017 WL 3476783 (Aug. 14. 2017 Wn. App.) (unpublished), despite *Shulikov* underscoring that Brausse was not entitled to a

summary proceeding to invalidate a charging lien. Response Brief on Appeal, p. 15. The *Shulikov* court held that RCW 60.40.10(1)(a) and (b) pertain to possessory attorney liens and RCW 60.40.030 creates summary adjudication procedures for such liens. *Id.* at *3. However, *Shulikov* noted that the other three sections of the statute - referring to charging liens within RCW 60.40.10(1)(c)-(e) - do not allow summary adjudication of a lien. *Id.* In *Shulikov*, the proceeds were paid into the court registry post-settlement and fell under 60.40.10(1)(d) – similar to the instant case, where mediated settlement proceeds are held by RSC. *Shulikov* reversed the trial court's release of the settlement proceeds and remanded the matter for an evidentiary hearing to adjudicate the lien. *Id.* at *7.

Pursuant to *Seawest*, *Glick*, and *Shulikov*, RCW 60.40.030's summary adjudication procedure may not be employed against charging liens. Accordingly, releasing JLI's lien was procedurally improper and the Opinion stands in direct conflict with the statute's plain meaning and these decisions.

E. The Court of Appeals decision conflicts with published Court of Appeals decisions that require giving effect to the plain meaning of the attorney lien statute which does not apply a "frivolous" standard.

The Court of Appeals remanded the matter with directions to the commissioner to "reconsider the RCW 4.84.185 basis for the fee award and to enter appropriate findings if the award is confirmed on that basis." *See* Opinion. The Opinion acknowledges that Brausse advanced his Motion for Show Cause under RCW 60.08.080 relating to chattel liens – which does authorize attorney's fees if the lien is "frivolous and made without reasonable cause." RCW 60.08.080(5). The mechanic's lien statute uses similar language. RCW 60.04.081(4).

While the Opinion concedes that the chattel lien statute does not apply, it sidesteps the attorney lien statute to ascertain whether fees might be awarded under another statute. *See* Opinion. However, and importantly, RCW 60.40 *et seq.* does not use the term "frivolous", and the attorney lien statute does not provide for a fee recovery.

This Court noted:

> Although some courts have been hesitant to supply or insert words, the better practice requires that a court enforce the legislative intent or statutory meaning where it is clearly manifested. The inclusion of words necessary to clear expression of the intent or meaning is in aid of the legislative authority. The denial of the power to insert words when the intent or meaning is clear is more of a usurpation of legislative power because the result can be the destruction of the legislative purpose.

State v. Hennings, 129 Wash.2d 512, 523, 919 P.2d 580, 586 (1996) (citing 2A Norman J. Singer, *Statutes and Statutory Construction* § 47.38, at 265–66 (C. Dallas Sands, 4th ed. 1984)). While the legislature specifically authorized fee recoveries under the chattel and mechanic lien statutes for frivolous liens, the legislature did not do so regarding attorney liens. Awarding what the legislature omitted is a usurpation of legislative power. *Id.* Consequently, Brausse is not entitled to fees below.

F. A significant question of law under the U.S. Constitution is involved, since a summary proceeding was improperly utilized to adjudicate a charging lien, depriving Petitioner of adequate notice under the Fourteenth Amendment.

Notice of the proceedings to adjudicate the lien came in the form of the Motion for Order to Show Cause. CP 4. This Court has noted that "[f]or over a century it has been recognized that 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.'" *Olympic Forest Products, Inc. v. Chaussee Corp.*, 82 Wash. 2d 418, 422, 511 P.2d 1002, 1005 (1973) (quoting *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233, 17 L.Ed. 531 (1864)). Further, "'at a minimum' the due process clause of the Fourteenth Amendment demands that a deprivation of life, liberty or property be preceded by 'notice and opportunity for hearing appropriate to the nature of the case.'" *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950)). This Court noted, "this opportunity 'must be granted at a meaningful time and in a

meaningful manner.'" *Id.* (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965)).

Since the dispute centers upon an attorney lien under RCW 60.40 *et seq*., the basis for a show cause hearing must be found therein. The only basis within the statute requires that an order be directed to an attorney to release money held by that attorney. RCW 60.40.020. No other show cause mechanism is contained within Chapter 60.40 *et seq*. *See* RCW 60.40.010-.030.

Since RCW 60.40.020 cannot apply because JLI was not in possession of Brausse's money and the summary proceeding mechanism referenced within RCW 60.40.030 cannot be applied to charging liens (RCW 60.40.010(1)(c)-(e)), neither a show cause hearing nor a summary proceeding was the appropriate procedural vehicle for adjudicating this charging lien. Therefore, the Order to Show Cause, *see* CP 9, failed to apprize Petitioner that a final adjudication of the lien's validity was to occur. Moreover, this procedure failed to provide adequate notice to the parties regarding the nature of the hearing, burden[s] of proof,

mechanism for proceeding in advance of the hearing, and submission of evidence, thereby preventing live testimony and cross-examination of parties and other individuals involved.

Despite being noticed for a show cause hearing, the commissioner turned the hearing into a summary adjudication in violation of the attorney lien statute. Doing so further violated *Olympic Forest* and case authority this Court relied upon therein, as it deprived JLI of notice and due process. *Olympic Forest*, 82 Wash. 2d at 422.

G. A significant question of law under the U.S. Constitution is involved, since Petitioner was deprived of an opportunity to be heard, thereby violating the Due Process Clause of the Fourteenth Amendment.

The Court of Appeals rejected JLI's due process argument regarding the lack of an equitable evidentiary hearing, relying upon *Krein v. Nordstrom*, 80 Wash.App. 306, 908 P.2d 889 (1995). The Opinion noted that "[s]imilar to the trial court proceedings here, the proper amount of the fee in *Krein* 'was tried in a summary proceeding on the affidavits.'" *See* Opinion.

However, in *Krein* summary proceedings under RCW 60.40.030 were appropriate because the "money" subjected to a lien was deposited into a blocked account by the attorney, and its release required his signature. *Id.* at 308. Thus, the attorney had possession of the money. *Id.* at 310. Accordingly, the *Krein* lien was a possessory lien, and summary proceedings were authorized to adjudicate the lien. Thus, the Opinion's reliance upon *Krein* was misplaced, as JLI's lien was a charging lien, and the summary proceeding utilized in *Krein* was unavailable. RCW 60.40.020-030; *Seawest,* 141 Wash.App. at 313.

The Court of Appeals also incorrectly concluded that the adjudication in *Krein* was conducted solely via submission of affidavits. *See* Opinion. Rather, as noted in *Krein*:

> The court set the case over for **a one-half day trial** on the short matter calendar, **allowing oral testimony** . . . **with the remainder of the evidence presented by affidavit** or declaration. **The court heard testimony and cross examination** . . . . The remainder of the evidence included declarations and affidavits from experts and those involved in the case . . . . **Levinson did not keep time records,**

> **but estimated that he spent 141 hours on the case**
> . . . .

Id. at 308-309 (emphasis added). Moreover, "the court, using [the attorney's] estimate of approximately 141 hours, awarded him $20,000 in attorney fees . . . ." *Id.* at 309. Despite not keeping invoices, the attorney recovered on his lien based upon his testimony. *Id.* Therefore, contrary to the Opinion, the *Krein* court did not handle the lien dispute "[s]imilar to the trial court proceedings here." *See* Opinion. Since a summary proceeding was not authorized under RCW 60.40.030 herein, *Krein's* only relevance is to demonstrate that even under a summary proceeding the parties received a one-half day trial, testimonial evidence was taken, and invoices were not required when an attorney estimated his time.

The commissioner herein mistakenly proceeded on a show cause application, bypassing even an abbreviated evidentiary hearing/trial with witness testimony and documentary evidence. CP at 31-64. Instead, each side was given five minutes to make

legal arguments but not present evidence. RP at 4, lines 11-14. The commissioner would not allow a proffer or allow invoices to be submitted at the hearing or supplemented post-hearing. RP at 11, lines 7-16. However, the 74-paragraph Declaration of Michael R. Jackson, CP 31, was on file, demonstrating hours worked, hourly fee charged, and costs paid by JLI. While JLI contests the manner in which the commissioner conducted the proceeding, the invoices were not necessary under *Krein* in light of Jackson's Declaration. Instead of recognizing that the attorney lien statute along with *Seawest*, *Glick*, and *Shulikov* barred adjudicating a charging lien via summary proceeding, the commissioner crafted his own procedural mechanism to adjudicate the lien and labeled it a summary judgment hearing. RP at 13, lines 24-25 ("[t]oday is, essentially, under the TEDRA petition, the summary judgment motion.").

This approach directly contradicts *Seawest's* holding that summary proceedings are not authorized to adjudicate charging liens and that resolution of the lien via evidentiary hearing or trial

with witness testimony and submission of evidence affords parties due process. *Seawest*, 141 Wash.App. at 314; *see also Shulikov*, 2017 WL 3476783, *7. *Seawest* sets the standard for adjudicating charging liens. Therein, the trial court held an evidentiary hearing. *Seawest*, 141 Wash.App. at 315. The parties were given three months "to conduct discovery and otherwise prepare for the evidentiary hearing" and "the hearing gave the parties ample opportunity to present evidence, bring counterclaims, and argue their theories of the dispute." *Id.*

The *Seawest* court "took testimony from a number of witnesses, admitted exhibits, and reviewed a deposition transcript admitted as part of the evidence." *Id.* *Seawest* held that due process was afforded, since an evidentiary hearing was conducted, witnesses testified, and parties were given "ample opportunity to present evidence." *Id.* at 315-16. Therefore, under *Seawest* the appropriate mechanism for resolving JLI's lien was not a summary proceeding but an ancillary evidentiary hearing, prior to which the parties could engage in discovery and

at which the parties could present witness testimony and submit documentary evidence. *Id.* at 315-16.

Conversely, at the show cause hearing, JLI was given a mere five-minute argument with no opportunity to present live testimony, despite the attendance of Jackson; no cross-examination of Brausse, despite his attendance; and the commissioner would not allow JLI to make a proffer or submit invoices prior to ruling on the charging lien. As the attorney lien statute did not authorize the commissioner to decide upon the validity of a charging lien via summary procedure, RCW 60.40.010-030, JLI was deprived of due process. The Fourteenth Amendment provides "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The U.S. Supreme Court has held that "persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." *Boddie v. Connecticut*, 401 U.S. 371, 378, 91. S.Ct. 780, 785 (1971).

An evidentiary hearing or trial that fully and finally determines the rights of the parties upon substantive evidence affords both JLI and Brausse due process before depriving one or the other of significant property rights. The U.S. Supreme noted, "a State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause." *Boddie*, 401 U.S. at 379. Further, "the State owes to each individual that process which, in light of the values of a free society, can be characterized as due." *Id.* at 380. Allowing the commissioner to proceed via show cause hearing and/or summary proceeding contravenes the attorney lien statute and jurisprudence interpreting same.

By not adjudicating the charging lien via evidentiary hearing or trial, upon proper notice, and the commissioner limiting the parties to five minutes of argument with no presentation of evidence and relying upon a procedural mechanism not authorized under the statute, JLI was deprived of due process under the Fourteenth Amendment. *See* U.S. Const.

amend. XIV, § 1. Through this direct violation of its due process rights under the Fourteenth Amendment, the attorney lien was ordered released, depriving JLI of a significant property interest. *See id.* This mechanism did not meet the standard for due process delineated in *Seawest*, *Olympic Forest*, or U.S. Supreme Court jurisprudence interpreting the Fourteenth Amendment of the United States Constitution. *See Seawest,* 141 Wash.App. at 315; *Olympic Forest*, 82 Wash. 2d at 422.

VI.
CONCLUSION

Dating back to this Court's 1916 holding in *Angeles Brewing* to recent appellate decisions in *Seawest*, *Glick*, and *Shulikov*, a consistent thread has run through Washington's jurisprudence for over one hundred years that a charging lien cannot be adjudicated by summary proceeding. To allow the commissioner's ruling and the Opinion to stand would erase long-standing precedent and render meaningless the plain meaning of the attorney lien statute.

JLI requests that the commissioner's order releasing its lien be reversed; the matter not be remanded for determination as to whether the lien was frivolous, as such analysis was never contemplated by the legislature; and JLI's lien be reinstated, allowing proceedings consistent with adjudicating charging liens to be pursued by the parties.

CERTIFICATION

I certify that this Petition for Review contains 4,998 words, excluding the parts of the document exempted from the word count, in compliance with Rule 18.17(c) of the Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2024, I electronically filed the foregoing with the Clerk of the Court using the Washington State Appellate Court's Portal which will send notification of such filing and serve all counsel of record via e-mail.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 4th day of December, 2024.

s/ Yonten Dorjee
Yonten Dorjee, Paralegal
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Appendix A:

Unpublished Opinion of the Court of Appeals, *Keoki Staab v. Holger Siegwart et al.*, No. 86038-1-I, 2024 WL 4262980 (Wash. Ct. App. Sept. 23, 2024)

FILED
9/23/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of: HEIDEMARIE STAAB, a/k/a HEIDEMARIE LISELOTTE STAAB, Deceased.	No. 86038-1-I DIVISION ONE UNPUBLISHED OPINION
KEOKI STAAB, Petitioner, v. HOLGER SIEGWART, in his capacity as the Personal Representative to the ESTATE OF HEIDEMARIE STAAB, a/k/a HEIDEMARIE LISELOTTE STAAB and THOMAS BRAUSSE, Respondent.	

FELDMAN, J. — The Jackson Law Firm, P.A. dba Jackson Law International (Jackson) appeals a superior court commissioner's order concluding (1) the attorney's lien filed by Jackson in this matter "is frivolous and is REMOVED . . . and Jackson shall take the necessary steps to release the lien," and (2) Thomas Brausse, respondent herein, "is GRANTED his attorney fees and costs." Jackson argues that the commissioner's ruling is procedurally flawed and violates its due

process rights. It further claims that the commissioner erred in awarding attorney fees in Brausse's favor. We affirm the commissioner's rulings regarding the attorney's lien, remand the fee award for required findings, and deny Brausse's request for attorney fees on appeal.

Brausse retained Jackson to assist the law firm of Ryan Swanson & Cleveland, PLLC (Ryan Swanson) in securing information located in Germany for use in a lawsuit pending in King County Superior Court. The matter eventually settled, and Ryan Swanson received the settlement proceeds. Although Brausse made several payments to Jackson for its legal services, Jackson subsequently filed a notice of attorney's lien in the amount of $65,954.23. Brausse requested invoices substantiating the additional fees, and the parties dispute whether those invoices were provided. To resolve the resulting impasse and determine what amount, if any, was owed to Jackson, Brausse filed a motion for an order to show cause why the settlement funds held by Ryan Swanson should not be released. Among other arguments, Brausse asserted that he and his attorney had requested, but not received, invoices or other suitable records substantiating the lien. The commissioner issued an order to show cause directing Jackson to appear at a scheduled hearing and "then and there to show cause, if any, why settlement funds held by Ryan Swanson . . . should not be released . . . for the reasons set forth in" Brausse's show cause motion. The commissioner granted Brausse's motion at the conclusion of the hearing, after hearing oral argument from both parties and reviewing their submissions.

Contrary to Jackson's argument, the superior court proceedings were not procedurally flawed. Attorney's liens are governed by ch. 60.40 RCW. RCW 60.40.030, entitled "Procedure when lien is claimed," states:

> If, however, the attorney claim a lien, upon the money or papers, under the provisions of this chapter, the court or judge may: (1) Impose as a condition of making the order, that the client give security in a form and amount to be directed, to satisfy the lien, when determined in an action; (2) summarily to inquire into the facts on which the claim of a lien is founded, and determine the same; or (3) to refer it, and upon the report, determine the same as in other cases.

Relevant here, the statute does not prescribe any particular procedure. Instead, prong (2) broadly authorizes courts to "summarily" inquire into the facts on which a lien is founded and "determine the same." RCW 60.40.030(2).

Case law is to the same effect. In *King County v. Seawest Inv. Assocs., LLC*, 141 Wn. App. 304, 170 P.3d 53 (2007), the trial court held an evidentiary hearing to determine the validity of an attorney's lien filed in the underlying litigation. The court concluded that the parties "had entered into a binding written fee agreement" and that the fees at issue "were reasonable" and directed payment of said fees into the court registry. *Id.* at 308-09. Addressing the procedure for adjudicating these issues, the court of appeals reiterated, "In *Angeles Brewing*, our supreme court placed the question of how to properly adjudicate an attorney's lien on a judgment squarely within the discretion of the trial court." *Id.* at 317 (citing *State ex rel. Angeles Brewing & Malting Co. v. King County Superior Court*, 89 Wash. 342, 345, 154 P. 603 (1916)).

Based on our careful review of the trial court record, including the report of proceedings, the summary adjudication at issue here comports with the above

authorities. The commissioner's show cause order directed Jackson to "show cause, if any, why settlement funds held by Ryan Swanson . . . should not be released . . . for the reasons set forth in" Brausse's show cause motion, which expressly noted the absence of supporting invoices. Without those invoices, or comparable evidence such as detailed billing records, the commissioner could not properly determine whether the claim of lien—totaling $65,954.23—was founded on sufficient facts in accordance with RCW 60.40.030 or, alternatively, whether a different and lesser amount would be appropriate. Yet Jackson did not provide those invoices to the commissioner before the hearing, nor did he do so at the outset of the hearing. Jackson alone is responsible for the consequences of that recalcitrance.

For similar reasons, we reject Jackson's argument that the trial court proceedings violated its due process rights. In *Krein v. Nordstrom*, 80 Wn. App. 306, 908 P.2d 889 (1995), the court considered whether the lack of a full adversarial hearing in adjudicating an attorney's lien comports with due process. The attorney claimant, Levinson, asserted an attorney's lien as to a settlement payment after he was discharged by his client in a contingent fee case. *Id.* at 307. Similar to the trial court proceedings here, the proper amount of the fee in *Krein* "was tried in a summary proceeding on affidavits." *Id.* Rejecting Levinson's due process argument, the court held: "considering the fee to be determined [allegedly totaling $130,000], the scope of the hearing called for under the statute [RCW 60.40.030, discussed above], and the actual hearing held, Levinson was given ample notice and opportunity to be heard. Our statute, and the procedure followed,

fully comports with due process." *Id.* at 310. As the above discussion shows, Jackson was likewise given ample notice and opportunity to be heard. His due process argument thus fails.

Next, Jackson argues that the commissioner erred in awarding attorney fees to Brausse. We agree. "A court may award attorney fees only when authorized by a contract, a statute, or a recognized ground in equity." *Ahmad v. Town of Springdale*, 178 Wn. App. 333, 343, 314 P.3d 729 (2013). Here, Brausse requested fees in the trial court under RCW 60.08.080(5) and RCW 4.84.185. The first provision cited by Brausse, RCW 60.08.080(5), does not apply here because it relates to frivolous or clearly excessive chattel liens, *see* RCW 60.08.010, not attorney's liens such as the lien at issue here. The second provision cited by Brausse, RCW 4.84.185, allows a trial court to award attorney fees to the prevailing party in refuting a frivolous action or defense but expressly requires "written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause." The commissioner here did not enter the required findings. Absent such findings, "we are unable to determine whether the trial court abused its discretion in granting attorney fees under this statute." *N. Coast Elec. Co. v. Selig*, 136 Wn. App. 636, 650, 151 P.3d 211 (2007). We therefore remand with directions to reconsider the RCW 4.84.185 basis for the fee award and to enter appropriate findings if the award is confirmed on that basis.

Lastly, Brausse requests fees on appeal under RCW 4.84.185, both because it recovered attorney fees below and because Jackson's appeal is

frivolous. But the trial court's fee award lacks the required findings, and this court has held that RCW 4.84.185 does not provide a basis for recovery of fees on appeal. *See Hanna v. Margitan*, 193 Wn. App. 596, 614-15, 373 P.3d 300 (2016) ("Because RCW 4.84.185 requires written findings to support an award of attorney fees for a frivolous claim, and appellate courts do not make findings, RCW 4.84.185 does not authorize an award of fees on appeal."). Accordingly, we deny Brausse's request for an award of fees on appeal.

Affirmed in part and remanded in part.

Feldman, J.

WE CONCUR:

Díaz, J.

Birk, J.

Appendix B:

Order of the Court of Appeals Denying
Motion for Reconsideration dated October 16, 2024

FILED
10/16/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Estate of: HEIDEMARIE STAAB, a/k/a HEIDEMARIE LISELOTTE STAAB, Deceased.	No. 86038-1-I ORDER DENYING MOTION FOR RECONSIDERATION
KEOKI STAAB, Petitioner, v. HOLGER SIEGWART, in his capacity as the Personal Representative to the ESTATE OF HEIDEMARIE STAAB, a/k/a HEIDEMARIE LISELOTTE STAAB and THOMAS BRAUSSE, Respondent.	

The Jackson Law Firm, P.A. d/b/a Jackson Law International, has filed a motion for reconsideration. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Feldman, J.

Judge

Appendix C:

Statutes and United States
Constitutional Amendment

United States Code Annotated
Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV, USCA CONST Amend. XIV
Current through P.L. 118-106. Some statute sections may be more current, see credits for details.

West's Revised Code of Washington Annotated
Title 4. Civil Procedure (Refs & Annos)
Chapter 4.84. Costs (Refs & Annos)

West's RCWA 4.84.185

4.84.185. Prevailing party to receive expenses for opposing frivolous action or defense

Currentness

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order.

The provisions of this section apply unless otherwise specifically provided by statute.

Credits
[1991 c 70 § 1; 1987 c 212 § 201; 1983 c 127 § 1.]

Notes of Decisions (184)

West's RCWA 4.84.185, WA ST 4.84.185
Current with all legislation from the 2024 Regular Session of the Washington Legislature.

End of Document

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Revised Code of Washington Annotated
Title 60. Liens (Refs & Annos)
Chapter 60.04. Mechanics' and Materialmen's Liens (Refs & Annos)

West's RCWA 60.04.081

60.04.081. Frivolous claim--Procedure

Effective: June 7, 2006
Currentness

(1) Any owner of real property subject to a recorded claim of lien under this chapter, or contractor, subcontractor, lender, or lien claimant who believes the claim of lien to be frivolous and made without reasonable cause, or clearly excessive may apply by motion to the superior court for the county where the property, or some part thereof is located, for an order directing the lien claimant to appear before the court at a time no earlier than six nor later than fifteen days following the date of service of the application and order on the lien claimant, and show cause, if any he or she has, why the relief requested should not be granted. The motion shall state the grounds upon which relief is asked, and shall be supported by the affidavit of the applicant or his or her attorney setting forth a concise statement of the facts upon which the motion is based.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted the lien shall be released, with prejudice, and that the lien claimant shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(3) If no action to foreclose the lien claim has been filed, the clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee pursuant to RCW 36.18.016. If an action has been filed to foreclose the lien claim, the application shall be made a part of that action.

(4) If, following a hearing on the matter, the court determines that the lien is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order releasing the lien if frivolous and made without reasonable cause, or reducing the lien if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the lien claimant. If the court determines that the lien is not frivolous and was made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the lien claimant to be paid by the applicant.

(5) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise.

Credits
[2006 c 192 § 3, eff. June 7, 2006; 1992 c 126 § 6; 1991 c 281 § 8.]

Notes of Decisions (58)

West's RCWA 60.04.081, WA ST 60.04.081
Current with all legislation from the 2024 Regular Session of the Washington Legislature.

End of Document

West's Revised Code of Washington Annotated
Title 60. Liens (Refs & Annos)
Chapter 60.08. Chattel Liens (Refs & Annos)

West's RCWA 60.08.080

60.08.080. Frivolous or clearly excessive claims of lien--Motion to court--Procedures

Effective: October 1, 2006
Currentness

(1) Any owner of property subject to a recorded claim of lien under this chapter, or contractor, subcontractor, lender, or lien claimant who believes the claim of lien to be frivolous and made without reasonable cause, or clearly excessive may apply by motion to the superior court for the county where the property is located, for an order directing the lien claimant to appear before the court at a time no earlier than six nor later than fifteen days following the date of service of the application and order on the lien claimant, and show cause, if any he or she has, why the relief requested should not be granted. The motion shall state the grounds upon which relief is asked, and shall be supported by the affidavit of the applicant or his or her attorney setting forth a concise statement of the facts upon which the motion is based.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted the lien shall be released, with prejudice, and that the lien claimant shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(3) If no action to foreclose the lien claim has been filed, the clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee of thirty-five dollars. If an action has been filed to foreclose the lien claim, the application shall be made a part of that action.

(4) The applicant must give notice of the hearing to the lien claimant by providing copies of the motion, order, and any other documents filed with the court, to the lien claimant by first-class mail, by certified or registered mail, or by personal service.

(5) If, following a hearing on the matter, the court determines that the lien is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order releasing the lien if frivolous and made without reasonable cause, or reducing the lien if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the lien claimant. If the court determines that the lien is not frivolous and was made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the lien claimant to be paid by the applicant.

(6) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise.

Credits
[2006 c 283 § 1, eff. Oct. 1, 2006.]

OFFICIAL NOTES

Effective date--2006 c 283: "This act takes effect October 1, 2006." [2006 c 283 § 5.]

West's RCWA 60.08.080, WA ST 60.08.080
Current with all legislation from the 2024 Regular Session of the Washington Legislature.

West's Revised Code of Washington Annotated
Title 60. Liens (Refs & Annos)
Chapter 60.40. Lien for Attorney's Fees

West's RCWA 60.40.010

60.40.010. Lien created--Enforcement--Definition--Exception

Currentness

(1) An attorney has a lien for his or her compensation, whether specially agreed upon or implied, as hereinafter provided:

(a) Upon the papers of the client, which have come into the attorney's possession in the course of his or her professional employment;

(b) Upon money in the attorney's hands belonging to the client;

(c) Upon money in the hands of the adverse party in an action or proceeding, in which the attorney was employed, from the time of giving notice of the lien to that party;

(d) Upon an action, including one pursued by arbitration or mediation, and its proceeds after the commencement thereof to the extent of the value of any services performed by the attorney in the action, or if the services were rendered under a special agreement, for the sum due under such agreement; and

(e) Upon a judgment to the extent of the value of any services performed by the attorney in the action, or if the services were rendered under a special agreement, for the sum due under such agreement, from the time of filing notice of such lien or claim with the clerk of the court in which such judgment is entered, which notice must be filed with the papers in the action in which such judgment was rendered, and an entry made in the execution docket, showing name of claimant, amount claimed and date of filing notice.

(2) Attorneys have the same right and power over actions to enforce their liens under subsection (1)(d) of this section and over judgments to enforce their liens under subsection (1)(e) of this section as their clients have for the amount due thereon to them.

(3) The lien created by subsection (1)(d) of this section upon an action and proceeds and the lien created by subsection (1)(e) of this section upon a judgment for money is superior to all other liens.

(4) The lien created by subsection (1)(d) of this section is not affected by settlement between the parties to the action until the lien of the attorney for fees based thereon is satisfied in full.

(5) For the purposes of this section, “proceeds” means any monetary sum received in the action. Once proceeds come into the possession of a client, such as through payment by an opposing party or another person or by distribution from the attorney's trust account or registry of the court, the term “proceeds” is limited to identifiable cash proceeds determined in accordance with RCW 62A.9A-315(b)(2). The attorney's lien continues in such identifiable cash proceeds, subject to the rights of a secured party under RCW 62A.9A-327 or a transferee under RCW 62A.9A-332.

(6) Child support liens are exempt from this section.

Credits
[2004 c 73 § 2, eff. June 10, 2004; Code 1881 § 3286; 1863 p 406 § 12; RRS § 136.]

OFFICIAL NOTES

Purpose--Intent--Application--2004 c 73: “The purpose of this act is to end double taxation of attorneys' fees obtained through judgments and settlements, whether paid by the client from the recovery or by the defendant pursuant to a statute or a contract. Through this legislation, Washington law clearly recognizes that attorneys have a property interest in their clients' cases so that the attorney's fee portion of an award or settlement may be taxed only once and against the attorney who actually receives the fee. This statute should be liberally construed to effectuate its purpose. This act is curative and remedial, and intended to ensure that Washington residents do not incur double taxation on attorneys' fees received in litigation and owed to their attorneys. Thus, except for RCW 60.40.010(4), the statute is intended to apply retroactively.” [2004 c 73 § 1.]

Notes of Decisions (57)

West's RCWA 60.40.010, WA ST 60.40.010
Current with all legislation from the 2024 Regular Session of the Washington Legislature.

End of Document

West's Revised Code of Washington Annotated
Title 60. Liens (Refs & Annos)
Chapter 60.40. Lien for Attorney's Fees

West's RCWA 60.40.020

60.40.020. Proceedings to compel delivery of money or papers

Effective: June 7, 2012
Currentness

When an attorney refuses to deliver over money or papers, to a person from or for whom he or she has received them in the course of professional employment, whether in an action or not, he or she may be required by an order of the court in which an action, if any, was prosecuted, or if no action was prosecuted, then by order of any judge of a court of record, to do so within a specified time, or show cause why he or she should not be punished for a contempt.

Credits
[2012 c 117 § 152, eff. June 7, 2012; Code 1881 § 3287; 1863 p 406 § 13; RRS § 137.]

Notes of Decisions (5)

West's RCWA 60.40.020, WA ST 60.40.020
Current with all legislation from the 2024 Regular Session of the Washington Legislature.

End of Document

West's Revised Code of Washington Annotated
Title 60. Liens (Refs & Annos)
Chapter 60.40. Lien for Attorney's Fees

West's RCWA 60.40.030

60.40.030. Procedure when lien is claimed

Currentness

If, however, the attorney claim a lien, upon the money or papers, under the provisions of *this chapter, the court or judge may: (1) Impose as a condition of making the order, that the client give security in a form and amount to be directed, to satisfy the lien, when determined in an action; (2) summarily to inquire into the facts on which the claim of a lien is founded, and determine the same; or (3) to refer it, and upon the report, determine the same as in other cases.

Credits
[Code 1881 § 3288; 1863 p 406 § 14; RRS § 138.]

OFFICIAL NOTES

***Reviser's note:** "this chapter" appeared in section 3288, chapter 250 of the Code of 1881, the lien sections of which are codified as chapter 60.40 RCW.

Notes of Decisions (10)

West's RCWA 60.40.030, WA ST 60.40.030
Current with all legislation from the 2024 Regular Session of the Washington Legislature.

End of Document

Appendix D:

Excerpts from Respondent's Response Brief
before the Court of Appeals

No. 86038-I

King County Superior Court Cause No. 21-4-05244-8 SEA

WASHINGTON STATE COURT OF APPEALS
DIVISION I

In re the Estate of

HEIDEMARIE STAAB, aka
HEIDEMARIE LISELOTTE STAAB,

Deceased.

KEOKI STAAB,

Petitioner,

v.

HOLGER SIEGWARD, in his capacity as Personal Representative to the ESTATE OF HEIDEMARIE STAAB, aka HEIDEMARIE LISELOTTE STAAB and THOMAS BRAUSSE,

Respondents.

BRIEF OF RESPONDENT THOMAS BRAUSSE

JP. Diener, WSBA No. 36630
Caleb J. Tingstad, WSBA No. 59883
BERESFORD BOOTH PLLC
145 Third Avenue South
Edmonds, WA 98020
Attorneys for Respondent

> proceeding by which the matters might be properly adjudicated.

State ex rel. Angeles Brewing & Malting Co. v. King County Superior Court, 89 Wash. 342, 345, 154 P. 603 (1916). This continues to be the case today, as this Court recently noted in *King County v. Seawest Inv. Associates, LLC*, 141 Wn. App. 304, 317, 170 P.3d 53 (2007): "In *Angeles Brewing*, our supreme court placed the question of how to properly adjudicate an attorney's lien on a judgment squarely within the discretion of the trial court."

The varying procedures courts employed in past case law underscore the trial court's discretion in setting the procedure under RCW 60.40.030. In *Glick v. McIlwain*, the trial court allowed adjudication of an attorney lien simply upon a "Motion for Summary Adjudication of Attorney's Fee Lien and Payment of Fees Owing." 154 Wn. App. 729, 731, 230 P.3d 167 (2009) (overturning trial court strictly on the grounds that the trial court could not reduce the attorney lien to an independent judgment). In *Matter of Marriage of Shulikov*, No. 75266–9–I, 2017 WL 3476783 (Aug. 14, 2017 Wn. App.) (unpublished), the Court allowed adjudication upon a motion by the lawyer asserting the lien. *Id.* at *1 (overturning trial court strictly because an attorney lien cannot attach to proceeds from a property division in a dissolution action). In *Krein v. Nordstrom*, 80 Wn. App. 306, 908 P.2d 889 (1995), the trial court set the case over for a one-

BADGLEY MULLINS TURNER

December 04, 2024 - 12:22 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	103,646-9
Appellate Court Case Title:	In the Matter of the Estate of: Heidemarie Staab

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Comments:

Amended Petition for Review per Court's request to comply with word-limits.

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