Attorney Liens in Colorado

BY ANTHONY VIORST

Colorado statutes authorize attorneys to assert liens in circumstances when clients fail to pay for legal services provided. This article explains the statutes authorizing two types of liens and discusses related case law and ethical issues.

No common law right to an attorney lien exists in Colorado.[1] Colorado statutory law authorizes unpaid attorneys to assert two different types of liens: (1) a charging lien under CRS § 13-93-114, and (2) a retaining lien under CRS § 13-93-115.[2] These statutory liens are designed to facilitate the payment of attorney fees earned for services rendered to the client.[3] However, these statutory liens are equitable in nature, and thus are subject to equitable defenses and ethical considerations. This article discusses the statutes establishing charging and retaining liens, as well as the interpretive case law addressing some of the complicated issues surrounding those liens.

Charging Liens

CRS § 13-93-114 creates a lien known as a "charging lien."[4] Under this statute, an unpaid attorney has a lien on any money or property that they have assisted a client to obtain, as follows:

> *All attorneys- and counselors-at-law shall have a lien on any money, property, choses in action, or claims and demands in their hands, on any judgment they may have obtained or assisted in obtaining, in whole or in part, and on any and all claims and demands in suit for any fees or balance of fees due or to become due from any client.* In the case of demands in suit and in the case of judgments obtained in whole or in part by any attorney, such attorney may file, with the clerk of the court wherein such cause is pending, notice of his or her claim as lienor, setting forth specifically the agreement of compensation between such attorney and his or her client, which notice, duly entered of record, shall be notice to all persons and to all parties, including the judgment creditor, to all persons in the case against whom a demand exists, and to all persons claiming by, through, or under any person having a demand in suit or having obtained a judgment that the attorney whose appearance is thus entered has a first lien on such demand in suit or on such judgment for the amount of his or her fees. Such notice of lien shall not be presented in any manner to the jury in the case in which the same is filed. *Such lien may be enforced by the proper civil action.* (Emphases added.)

Under the plain meaning of the statute, an attorney's charging lien can only be imposed upon money or property that the attorney has "obtained or assisted [the client] in obtaining."[5] Thus, it does not apply to money or property in the client's possession that is unrelated to the attorney's legal representation.[6]

A charging lien can apply not only to a money judgment, but also to an interest in real property that counsel helped the client obtain.[7] The attorney may then record that real property lien with the clerk in the county where the property is located.[8] In addition, a charging lien can apply to maintenance payments obtained through the attorney's assistance, but cannot be applied to child support payments.[9]

Charging Liens Are Equitable in Nature

"The purpose of the charging lien is to satisfy the attorney's equitable claim for services rendered to the client."[10] The Colorado Supreme Court has described the equitable nature of this lien as follows: "The right to the special, particular or charging lien . . . rests, not on possession, but on the equity of an attorney to be paid his fees and disbursements out of the judgment obtained as a result of his service and skill."[11] Thus, the adjudication of an attorney's lien is an equitable process.[12] Because a charging lien is an equitable claim for payment, it is necessarily subject to equitable defenses and ethical considerations. Those equitable defenses and considerations include whether the fees charged are unreasonable.

Reasonable Value of a Charging Lien

Absent a client's challenge to the amount billed by counsel, a trial court considering a charging lien will generally enter a judgment in the amount requested by the attorney. However, when the client challenges the value of the charging lien, a trial court, before entering judgment, must determine the reasonable value of that lien.[13] This principle applies even in those situations where the parties have agreed to a contingent fee and all of the contingencies have been met.[14]

The value of a reasonable attorney fee starts by calculating the lodestar amount, which is equal to the number of hours reasonably spent on the litigation multiplied by a reasonable hourly rate.[15] After calculating the lodestar amount, the trial court then has discretion to make an upward or downward adjustment, based on the factors listed in the Colorado Rules of Professional Conduct (Colo. RPC or Rules) for determining the reasonableness of attorney fees.[16] Colo. RPC 1.5(a) lists the following factors for trial courts to consider in determining the reasonableness of attorney fees:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) whether the fee is fixed or contingent.[17]

Enforcement of a Charging Lien

The last sentence of the charging lien statute, CRS § 13-93-114, provides that "[s]uch lien may be enforced by the proper civil action." Interpreting this sentence, the Colorado Supreme Court has held that "the attorney's charging lien may not only be asserted, but may be enforced, in the civil action which gave rise to the lien claim, or, in the alternative, in an independent action. Both are 'proper civil actions' within the meaning of the statute."[18] Although neither the charging lien statute nor any other statutory provision explicitly sets a time limit directly applicable to an enforcement action for a charging lien claim, the Colorado Court of Appeals has held that an attorney must enforce a charging lien within the limitations period applicable to enforcement of the underlying debt.[19] In proving the existence and value of a charging lien, the burden of proof is on the attorney claiming the lien.[20]

An attorney cannot take steps to enforce a charging lien until that lien has been reduced to judgment.[21] Before the lien is reduced to judgment, funds held by a lawyer remain the property of the client.[22] But once the lien is reduced to judgment, the attorney is entitled to enforce it.[23] Enforcement actions may include recording the judgment and taking any legally appropriate steps to collect on that judgment.[24]

Impact of a Legal Malpractice Claim on a Charging Lien

As discussed above, an attorney may assert a charging lien in the civil action that gave rise to the lien claim, or, alternatively, may pursue it in a separate action. A client faced with a charging lien may assert a counterclaim for legal malpractice, and the Colorado Court of Appeals has held that in an independent action to enforce a charging lien, a legal malpractice counterclaim is *compulsory*, such that it cannot be raised in a later proceeding.[25] This ruling was based on CRCP 13(a), which provides, in relevant part, that "[a] pleading shall state as a counterclaim any claim which at the time of filing the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim . . . ."[26] However, no Colorado appellate case has addressed whether, in responding to a charging lien filed in the underlying case that gave rise to the lien, a legal malpractice counterclaim is compulsory under CRCP 13(a) such that failure to bring it constitutes waiver or forfeiture of that claim.

> "The value of a reasonable attorney fee starts by calculating the lodestar amount, which is equal to the number of hours reasonably spent on the litigation multiplied by a reasonable hourly rate."

Those states that have addressed this issue, however, have found that a legal malpractice counterclaim is *not* compulsory in response to a charging lien asserted by counsel in the underlying case, because a charging lien filed in the underlying case does not transform counsel and client into "opposing parties" under the applicable rules.[27]

Ethical Considerations

A charging lien is not inconsistent with the Colorado Rules of Professional Conduct. Colo. RPC 1.8(i), concerning conflicts of interest with current clients, prohibits a lawyer from "acquir[ing] a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client,"[28] but recognizes an exception for "a lien authorized by law to secure the lawyer's fee or expenses."[29] Likewise, the CBA Ethics Committee has opined that "[a] lawyer may ethically assert a charging lien for payment of legal services the lawyer has rendered, provided the lawyer complies with the [charging lien] statute."[30]

However, a lawyer who files an invalid charging lien may be subject to discipline under Colo. RPC 8.4, concerning attorney misconduct. That rule states that it is professional misconduct for an attorney to engage in conduct that involves "dishonesty . . . [or] deceit"[31] or is "prejudicial to the administration of justice."[32] With regard to charging liens, attorneys have been disciplined for misconduct based on the following actions: (1) seeking to recover funds that are unrelated to the legal representation;[33] (2) recording a charging lien without first obtaining a judgment;[34] and (3) overzealously pursuing a charging lien, such that counsel "crossed the line into vexatious litigiousness, burdening his former client, opposing counsel, and the courts."[35]

Retaining Liens

The retaining lien statute, CRS § 13-93-115, permits an unpaid attorney to retain a client's file and/or money due to a client, as follows:

> An attorney has a lien for a general balance of compensation upon any papers of his or her client that have come into his or her possession in the course of his or her

professional employment and upon money due to his or her client 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.

This statute creates a lien, known as a retaining lien[36] or possessory lien,[37] that can be applied to a client's papers or to funds owed to the client. The Colorado Supreme Court has explained the difference between a retaining lien and a charging lien:

> The former attaches to all papers, books, documents, securities and money coming into an attorney's possession in the course of his professional employment. *The attorney has a right to retain them in his possession until the general balance due him for legal services is paid* . . . . The right to the special, particular or charging lien, on the other hand, rests, not on possession, but on the equity of an attorney to be paid his fees and disbursements out of the judgment obtained as a result of his service and skill.[38]

Regarding a client's papers, a retaining lien allows an attorney to maintain possession of a client's papers until the client pays their bill for any legal services that the attorney performed.[39] The retaining lien gives the attorney the right to maintain possession of a client's papers not only in the particular matter for which the papers came into the attorney's possession, but for all legal matters in which the attorney has represented the client.[40]

Regarding an attorney's right to retain funds due to a client, a charging lien applies only to funds the attorney helped obtain, whereas a retaining lien "secures the payment of attorney fees for all legal matters on which services have been rendered."[41]

However, the "'right to retain' funds . . . under a retaining lien in no way translates into a right unilaterally to remove the funds for professional or personal use without independent or stipulated resolution to the conflict over fees."[42] Rather, where the amount owed to an attorney is in dispute, an attorney who is holding client funds pursuant to a retaining lien must place those funds in a trust account until a judgment is obtained or the fee dispute is otherwise resolved.[43]

Retaining Liens Are Equitable in Nature

The purpose of a retaining lien is to help an attorney recover fees and costs incurred in performing legal services for a client.[44] By withholding the client's file or funds until payment is made, the lien encourages the client to satisfy any outstanding obligation for legal services.[45] The retaining lien statute addresses how a retaining lien is created, and the materials that it covers, but the statute "does not suggest that a retaining lien is absolute."[46] Instead, the principles established in connection with charging liens apply with equal force to retaining liens.[47] Thus, proceedings that involve retaining liens, like proceedings that involve charging liens, are equitable in nature, and the retaining lien statute will not be strictly enforced when application of the statute would result in an unjust or inequitable outcome.[48]

General Balance of Compensation

The retaining lien statute provides that an "attorney has a lien for a general balance of compensation upon any papers of his or her client."[49] The Colorado Supreme Court has held that "[t]his language can only be construed to mean that a lien attaches to the client's papers once an attorney has completed compensable work."[50] For an attorney to have a retaining lien, then, the client must owe the attorney fees or expenses.[51] If no fees are owed, no valid lien can exist.[52]

Waiver of Retaining Liens

An attorney's ability to assert a retaining lien can be waived or lost.[53] Because a retaining lien imposed upon client documents only applies to documents in the attorney's possession,[54] an attorney may implicitly waive a retaining lien by surrendering possession of files covered by the lien.[55] This waiver only applies to the documents surrendered by the attorney, and if the attorney retains possession of some client files, a retaining lien may still be asserted as to those files.[56] A binding waiver of a retaining lien can also take place when an attorney provides "unconditional assurances that the documents w[ill] be returned" to the client.[57] Finally, the Colorado Supreme Court has held that "the statutory privilege afforded practicing attorneys to assert a 'retaining lien' is . . . waived by conduct that results in suspension or disbarment."[58]

Enforcement Proceedings Relating to Retaining Liens

An attorney's retaining lien is essentially a right to retain the client's property until the attorney is fully paid, so it ordinarily cannot be directly enforced either at law or in equity.[59] However, a retaining lien relating to client papers may be enforced in a collateral proceeding brought for another purpose. For example, a trial court can address the enforceability of a retaining lien upon a client's papers in conjunction with a motion by a client or former client to compel the attorney to disclose those documents.[60] In addition, enforceability of a retaining lien can be addressed when a third party has brought a claim against the lawyer's client or former client and seeks disclosure of the attorney's files in order to bolster that claim.[61] It is the attorney who bears the burden of proving the existence of a retaining lien, while the former client bears the burden of proving any applicable defenses or exceptions.[62]

Grounds for Refusing to Enforce Attorney Liens

In *Jenkins v. District Court*, the Colorado Supreme Court held that where an attorney has sued a former client for unpaid legal fees, a retaining lien will not be enforced, and files relevant to the fee dispute must be disclosed.[63] As grounds for this holding, the court explained that

> [w]hen a lawyer has chosen to seek judicial aid in collecting his fees . . . the need for a retaining lien pales in comparison with the highly material nature of the subject of the lien, the implications of a lawyer's duties toward his client, and the importance of promoting the truth-seeking functions of discovery rules.[64]

More recently, in *Norton v. Ruebel*, the Colorado Court of Appeals reached a similar conclusion, holding that a trial court tasked with determining whether to enforce a retaining lien must "consider or weigh the competing interests, ethical considerations, and considerations of public policy."[65] These factors enumerated by the *Norton* court are addressed in greater detail below.

Competing interests. With regard to competing interests, the *Norton* court recognized that a trial court must consider the interests of the attorney asserting the retaining lien in being compensated for their services.[66] Additionally, a trial court must consider the client's or third party's interests in accessing the attorney's files.[67] To some extent, then, weighing competing interests hinges on whether the party litigating against the attorney is a client or former client on the one hand, or a third party on the other. In *Norton*, the Colorado Court of Appeals recognized that, absent exceptional circumstances, an attorney generally may withhold disclosure of client files from a nonpaying client, but "it would be inequitable to deny a third party access to the papers covered by the retaining lien."[68]

Ethical considerations. With regard to ethical considerations, Colo. RPC 1.16(d) provides that

> [u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

However, Rule 1.16(d) also provides that "[t]he lawyer may retain papers relating to the client to the extent permitted by other law."[69] This ethical rule establishes that an attorney generally should return unearned funds and client files at the time the legal representation is terminated, but also recognizes that papers may be "retain[ed] . . . to the extent permitted by other law," which would include the retaining lien statute. Thus, Rule 1.16(d) does not really alter existing jurisprudence concerning retaining liens.

The CBA Ethics Committee's Formal Opinion 82 also addresses ethical considerations. The opinion provides that, unless an exception applies, "a lawyer may ethically assert a retaining lien on a client's papers when the client is financially able to pay fees, but fails or refuses to do so."[70] The opinion further provides that "an attorney may not ethically assert a retaining lien" under any of the following circumstances:

1. there is no legal basis for the assertion of the lien;
2. a lawyer has been suspended or disbarred;
3. a lawyer is guilty of misconduct in the particular matter;
4. in a contingency fee case, prior to the completion of the case;
5. a client who cannot pay the fees furnishes adequate security or posts an adequate bond;
6. the client's papers are essential to preserve an important personal liberty interest, or defense of a criminal charge;
7. the lawyer has withdrawn without just cause or reasonable notice;
8. the lawyer is validly discharged for professional misconduct, or conduct prohibited by the Code of Professional Responsibility; and
9. the client is financially unable to post a bond or pay, unless the client's inability to pay or post bond is a result of fraud or gross imposition by the client.[71]

In *Norton*, the Colorado Court of Appeals described CBA Formal Opinion 82 as a "persuasive authority" and endorsed four of the nine instances identified in the opinion as rendering a retaining lien unethical and unenforceable.[72]

Public policy considerations. Although no Colorado appellate case explicitly delineates the public policies that will preclude enforcement of a retaining lien, Colorado case law strongly suggests that a retaining lien will not be enforced when its enforcement would cause material prejudice to the client in the pending litigation.

For example, in *Jenkins v. Weinshienk*, on appeal of an order compelling an attorney who had asserted a retaining lien to disclose client files, the Tenth Circuit held that a retaining lien will not be enforced when "its assertion is in such conflict with important principles that it must be relinquished when balanced against considerations of public policy."[73] The Tenth Circuit did not define the term "public policy," but noted that "[v]ery few exceptions grounded on public policy have been recognized," and explicitly endorsed retaining liens that "inconvenienced" a client, thereby motivating the client to "settle with [the attorney], pay up, or file an adequate bond."[74]

After the Tenth Circuit's opinion in *Weinshienk*, the Colorado Supreme Court implicitly recognized the principle that a retaining lien that causes material prejudice to the client in the pending litigation will not be enforced.[75] In *Jenkins v. District Court*, the client brought a legal malpractice claim against his former attorney, and the attorney counterclaimed for unpaid fees and costs.[76] In upholding the district court's order compelling the attorney to disclose the client files held pursuant to a retaining lien, the Colorado Supreme Court explained that because the attorney was seeking to recover fees and expenses allegedly owed to him by the client, "papers which reflect the nature of the services rendered and the amount of time expended become very material," and therefore the discovery of these papers "should not be unduly hampered."[77]

Thereafter, in *Norton*, the Colorado Court of Appeals cited *Weinshienk* for the proposition that "courts will not enforce retaining liens for reasons 'grounded on public policy,'" and described this Tenth Circuit case as "persuasive authority."[78] Regarding the *Weinshienk* court's endorsement of retaining liens that "inconvenience" the client, the *Norton* court noted that "[t]here is a material distinction between an action that materially prejudices a former client and one that merely causes inconvenience or hampers the former client's defense."[79] Colorado appellate courts have also recognized that public policy disfavors enforcing a retaining lien against a client or former client who is indigent or otherwise unable to pay outstanding legal fees.[80] Indeed, in such cases, unless the inability to pay is "a result of fraud or gross imposition by the client,"[81] the lawyer should forego the lien, particularly if the lawyer "knew of the client's financial inability at the beginning or if [the lawyer] failed to assure agreement as to the amount or method of calculating the fee."[82]

Conclusion

Charging liens and retaining liens can be effective tools for recovering unpaid legal fees, but they should be used with care. Attorneys must understand both the benefits and the limitations of these remedies to avoid legal and ethical pitfalls.

Anthony Viorst is a shareholder in The Viorst Law Offices, P.C., where he specializes in professional negligence cases—tony@viorstlaw.com.

Coordinating Editor: Joseph Michaels, joseph.michaels@coag.gov

NOTES

1. *People v. Brown*, 840 P.2d 1085, 1087 (Colo. 1992).

2. *See id.* (identifying "charging lien" and "retaining lien" as the "only two kinds of attorney's liens in this state").

3. *See generally Fillmore v. Wells*, 15 P. 343, 345 (Colo. 1887) (attorney's lien secures attorney's right to compensation or costs); *In re Est. of Benney*, 790 P.2d 319, 322 (Colo. 1990) (purpose of charging lien is to satisfy attorney's equitable claim for services rendered to the client); *Collins v. Thuringer*, 21 P.3d 709, 710 (Colo. 1933).

4. *People v. Mills*, 861 P.2d 708, 710 (Colo. 1993).

5. CRS § 13-93-114.

6. *See People v. Razatos*, 636 P.2d 666, 669–70 (Colo. 1981) (even if fees are owed, lawyer cannot assert charging lien against proceeds from a sale that was not the basis of the cause of action); *Mills*, 861 P.2d at 710 (lawyer cannot assert a valid charging lien for services unrelated to the case in which the attorney is representing the client).

7. *Dolan v. Flett*, 582 P.2d 694, 696 (Colo.App. 1978) (charging lien attached "immediately upon the obtainment of a judgment"). *See also Fillmore*, 15 P. at 345 (explaining that "any judgment" means "fruits of [any] judgment," including realty).

8. *Dolan*, 582 P.2d at 695–96; Rothrock, "Recording Charging Liens Against Real Property: When, Not Whether," 31 *Colo. Law.* 121, 123 (Oct. 2002) (noting that, among other drawbacks, "failure to record may cloud title" or "spawn litigation").

9. *Samuel J. Stoorman & Assocs., P.C. v. Dixon*, 394 P.3d 691, 694–95 (Colo. 2017) (maintenance payments, but not child support payments, subject to charging lien); *In re Marriage of Etcheverry*, 921 P.2d 82, 83 (Colo.App. 1996) (child support payments not subject to charging lien), *cited with approval in Dixon*, 394 P.3d at 694.

10. *Est. of Benney*, 790 P.2d at 322 (citing *Fillmore*, 15 P. at 347). *Accord Cope v. Woznicki*, 140 P.3d 239, 241 (Colo.App. 2006) (quoting *Est. of Benney*, 790 P.2d at 322).

11. *Collins*, 21 P.2d at 710.

12. *See In re Marriage of Rosenberg*, 690 P.2d 1293, 1294 (Colo.App. 1994) (under charging lien statute applicable to attorney liens, "[a] proceeding initiated to establish an attorney's lien . . . is equitable in nature"). *Accord Lopez v. Suncor Energy, Inc.*, No. 11-cv-00081, 2012 WL 3886428, at *10 (D.Colo. Sept. 7, 2012) (noting no right to jury trial because attorney liens are equitable in nature (citing *Rosenberg*, 690 P.2d at 1294)); *Fillmore*, 15 P. at 347 ("The attorney's lien . . . is equitable in its nature.").

13. *See In re Marriage of Shapard*, 129 P.3d 1007, 1009 (Colo.App. 2004) (value of an attorney lien is the "reasonable fees remaining due and unpaid"). *See also Apa v. Qwest Corp.*, 402 F.Supp.2d 1247, 1250 (D.Colo. 2005) (Under Colorado law, "no attorney's lien should be permitted where the amount of fee or expense reimbursement sought is not reasonable in light of the circumstances under which the services were rendered."); *Deitz v. Univ. of Denv.*, No. 95-cv-02756, 2011 WL 723118, at *10 (D.Colo. Feb. 22, 2011) ("[A]lthough not expressly stated in the statute, Colorado authority has superimposed a reasonableness standard requiring that attorney lien claims be limited to 'reasonable fees and expenses.'") (collecting cases); *People ex rel. MacFarlane v. Harthun*, 581 P.2d 716, 718 (Colo. 1978) (holding that charging lien statute "gives the attorney a lien on the judgment to the extent of his reasonable fees").

14. *Deitz v. Univ. of Denv*., No. 95-cv-02756, 2011 WL 2559829 at *4–6 (D.Colo. June 28, 2011) (declining to enforce contingent fee agreement under charging lien statute, noting that "this matter proceeds as a lien enforcement which means that the lien claim is limited to a reasonable amount even if the parties agreed to a larger amount" (citing *McFarlane*, 581 P.2d at 718)). *See also Berra v. Springer & Steinberg, P.C.*, 251 P.3d 567, 571 (Colo.App. 2010) ("Our cases recognize that when reviewing contingency fee agreements for reasonableness under their inherent powers, our courts have tested the contracts against the quantum meruit standard, and determined whether the services to be performed were reasonably worth the amount stated in the agreement, by considering the amount of time spent, the novelty of the questions of law, and the risk of non-recovery to the client and attorney." (citation modified)). *Cf. LaFond v. Sweeney*, 345 P.3d 932, 937 (Colo.App. 2012) ("An enforceable contingent fee agreement provides notice to a client that 'should the attorney fulfill his end of the bargain to the benefit of the client, the client will be required to pay the attorney from the funds the attorney receives for the client. Hence, where the agreed upon legal services are completed, the client has the expectation that she must pay the attorney.'") (quoting *Mullens v. Hansel-Henderson*, 65 P.3d 992, 998 (Colo. 2002)), *aff'd*, 343 P.3d 939 (Colo. 2015).

15. *Tallitsch v. Child Support Servs., Inc.*, 926 P.2d 143, 147 (Colo.App. 1996); *Spensieri v. Farmers All. Mut. Ins. Co.*, 804 P.2d 268, 271 (Colo.App. 1990). *Accord Davis v. Kutak Rock, LLP*, No. 09-cv-02768, 2013 WL 1222373, at *2–3 (D.Colo. Mar. 25, 2013) (discussing reasonable hourly rate and attorney fees and recognizing that the court's discretion must "reflect the prevailing market rates in the relevant community" (citation modified)).

16. *In re Marriage of Aragon*, 444 P.3d 837, 842 (Colo.App. 2019) (citing *S. Colo. Orthopaedic Clinic Sports Med. & Arthritis Surgeons, P.C. v. Weinstein*, 343 P.3d 1044, 1049 (Colo.App. 2014)).

17. Colo. RPC 1.5(a)(1)–(8).

18. *Gee v. Crabtree*, 560 P.2d 835, 836 (Colo. 1977). *Accord Gold v. Duncan, Ostrander, & Dingess, P.C.*, 143 P.3d 1192, 1193 (Colo.App. 2006) (citing *Gee*, 560 P.2d 835).

19. *Gold*, 143 P.3d at 1193–94; *In re Marriage of Mitchell*, 55 P.3d 183, 185 (Colo.App. 2002).

20. *Mitchell*, 55 P.3d at 185 (citing *Gooding v. Lyon*, 166 P. 564 (Colo. 1917)).

21. *See Fisher*, 202 P.3d at 1197 ("In order to collect under the lien, the attorney must reduce it to a judgment."); *People v. Smith,* 830 P.2d 1003, 1005–06 (Colo. 1992) (attorney disciplined for seeking to enforce lien that had not been reduced to judgment).

22. *People v. Gray*, 35 P.3d 611, 620 (Colo. O.P.D.J. 2001).

23. *In re Marriage of Weydert*, 703 P.2d 1336, 1337–38 (Colo.App. 1985). *Accord In re Marriage of Smith*, 687 P.2d 519, 520–21 (Colo.App. 1994).

24. *Weydert*, 703 P.2d at 1337–38 (attorney who obtained and recorded judgment was "entitled to enforcement of his rights as a judgment creditor in the proceeds from the sale of the parties' residence").

25. *Allen v. Martin*, 203 P.3d 546, 556–57 (Colo. App. 2008) (counterclaim is "compulsory" if it arises out of same transaction or occurrence as opposing party's claim).

26. CRCP 13(a).

27. *See, e.g., Computer One, Inc. v. Grisham & Lawless, P.A.*, 188 P.3d 1175, 1181–82 (N.M. 2008) (declining to find that a legal malpractice counterclaim is mandatory in response to a charging lien filed in the underlying case because client and counsel are not technically "opposing parties" under New Mexico's Rule of Civil Procedure 13(a)). *Accord Evans v. Evans*, 439 P.3d 418, 422–23 ("One must first be a 'party' before one can be an 'opposing party,' and an attorney does not transform his former client into either, merely by taking steps to secure attorney fees in the same underlying proceeding." (citation modified)); *Tilzer v. Davis, Bethune & Jones, L.L.C.*, 204 P.3d 617, 624 (Kan. 2009) ("By moving to enforce an attorney's fee lien in the underlying action, Davis was proceeding against the judgment itself, not against the former client. Such an action does not transform the former client into an 'opposing party' for purposes of the compulsory counterclaim rule. To invoke that rule, Davis had to file an independent action against Tilzers, *i.e.*, had to become a 'party' in the first instance.").

28. Colo. RPC 1.8(i).

29. Colo. RPC 1.8(i)(1).

30. CBA Ethics Comm., Formal Op. 110, *Assertion of Attorney's Charging Lien/Security Interest in Property*, at 1 (Jan. 19, 2002; amended May 19, 2002).

31. Colo. RPC 8.4(c).

32. Colo. RPC 8.4(d).

33. *See Razatos*, 636 P.2d at 669–70 (lawyer cannot assert charging lien against proceeds from a sale that was not the basis of the cause of action); *Mills*, 861 P.2d at 710–11 (lawyer cannot ethically assert a charging lien for services unrelated to the case in which the attorney is representing the client).

34. *People v. Smith*, 830 P.2d at 1005.

35. *People v. Egbune*, 531 P.3d 456, 471 (Colo. O.P.D.J. 2023).

36. *N. Valley Bank v. McGloin, Davenport, Severson & Snow, Pro. Corp.*, 251 P.3d 1250, 1254 (Colo.App. 2010).

37. *See Est. of Benney*, 790 P.2d at 322 (the retaining lien is a possessory lien). *Accord N. Valley Bank*, 251 P.3d at 1254 (citing *Est. of Benney*, 790 P.2d at 322).

38. *Collins*, 21 P.2d at 710 (emphasis added).

39. *Id.*

40. *Id.* (under retaining lien statute, the "attorney has a right to retain [the client's papers] in his possession until the general balance due him for legal services is paid, whether such services grew out of the special matters then in his hands, or other legal matters"). *Accord Est. of Benney*, 790 P.2d at 323; *Norton v. Ruebel*, 562 P.3d 96, 101–02 (Colo.App. 2024). *See also* Fischer, Annot., "Attorney's Retaining Lien: What Items of Client's Property or Funds Are Not Subject to Lien," 70 A.L.R. 4th 827, § 2[a] (1989) ("The retaining lien gives the attorney the right to retain possession thereof as security for cost, disbursements, and attorney fees, not only in the particular cause in which they came into the attorney's possession, but for all funds due for other professional employment.").

41. *Mills*, 861 P.2d at 710 (quoting *Est. of Benney*, 790 P.2d at 322–23).

42. *Gray*, 35 P.3d at 619 (quoting *Att'y Grievance Comm'n v. Sheridan*, 741 A.2d 1143, 1161 (Md. 1999)).

43. *Id.* (discussing holding "funds in escrow until the dispute is resolved").

44. *Norton*, 562 P.3d at 101–02 (citing *In re Att'y G.*, 302 P.3d 248, 251 (Colo. 2013)).

45. *Jenkins v. Weinshienk*, 670 F.2d 915, 917 (10th Cir. 1982). *See also* Annot., "Means of Enforcing or Making Effective Attorney's Retaining Lien," 111 A.L.R. 487 (1937) ("The only advantage which the attorney gains by means of such a lien is the possibility of forcing his client to settle because of the embarrassment, inconvenience, or worry caused such client thereby.").

46. *Norton*, 562 P.3d at 102 (citing *Antero Treatment LLC v. Veolia Water Techs., Inc.*, 546 P.3d 1140, 1146 (Colo. 2023)).

47. *MacFarlane*, 581 P.2d at 718.

48. *Norton*, 562 P.3d at 102.

49. CRS § 13-93-115.

50. *MacFarlane*, 581 P.2d at 718.

51. *People v. Garnett*, 725 P.2d 1149, 1154 (Colo. 1986).

52. *See id. See also People ex rel. Goldberg v. Gordon*, 607 P.2d 995, 997 (Colo. 1980) (attorney sanctioned for professional misconduct for wrongfully asserting attorney lien when no balance of compensation owed).

53. *MacFarlane*, 581 P.2d at 718 (citing *Fillmore*, 15 P. 343). *Accord Norton*, 562 P.3d at 103 (discussing waiver requirements).

54. CRS § 13-93-115 (attorney's retaining lien applies to "papers of his or her client that have come into his or her possession"). *Accord Norton*, 562 P.3d at 103 (lawyer may implicitly waive retaining lien by surrendering possession of files covered by the license because lawyer no longer has actual possession of those papers).

55. *Norton*, 562 P.3d at 103.

56. *Id.* at 104 (releasing portion, but not all, of the files does not constitute waiver).

57. *Brown*, 840 P.2d at 1088.

58. *MacFarlane*, 581 P.2d at 719.

59. *See Gray*, 35 P.3d at 619 (funds held in escrow until dispute resolved). *See also Norton*, 562 P.3d at 101–02 (retaining lien statute "does not speak to the circumstances under which a retaining lien may, or may not, be enforced" (citing *Antero Treatment*, 546 P.3d at 1146)).

60. *See Jenkins v. Dist. Ct.*, 676 P.2d 1201, 1203 (Colo. 1984) (addressing enforceability of retaining lien in case involving legal malpractice claim filed by former client against attorney, and counterclaim for unpaid legal fees, where former client "filed a motion to compel discovery pursuant to C.R.C.P. 34").

61. *See Weinshienk*, 670 F.2d at 920 ("If the only interests at stake . . . were those of the attorney and his clients or former clients, the case would present no problem; the lien would be allowed to stand. But also involved is [the third party's] interest: on its face Jenkins's retaining lien is interfering with [the third party's] interest in a speedy resolution of his claims.").

62. *Norton*, 562 P.3d at 105.

63. *Jenkins*, 676 P.2d at 1204–05.

64. *Id.* at 1205.

65. *Norton*, 562 P.3d at 104–05.

66. *See id.* at 105 (in determining whether to enforce retaining lien, trial court must consider "whether [the attorney's] assertion of the retaining lien against the [client] is necessary to protect [the attorney's] interest in receiving payment for the outstanding legal fees").

67. *See id.* (trial court also must consider "whether enforcing the retaining lien against the [client or third party] would materially prejudice their ability to litigate against [the attorney] in this action").

68. *Id.* at 103. Notwithstanding this broad statement by the *Norton* court, the court also cited with approval *In re Garcia*, 69 B.R. 522, 525 (Bankr.E.D.Pa. 1987), *aff'd*, 76 B.R. 68 (E.D.Pa. 1987), in which the bankruptcy court held that attorney retaining liens should be allowed "when the third party is closely connected with the attorney's client and is attempting to benefit from the services provided. In such circumstances, it is inequitable to allow the third party to benefit without paying for the services." *See Norton*, 562 P.3d at 103.

69. Colo. RPC 1.16(d).

70. CBA Ethics Comm., Formal Op. 82, *Assertion of Attorney's Retaining Lien on Client's Papers*, at 3 (adopted Apr. 15, 1989; addendum issued 1995) (hereinafter CBA Ethics Op. 82).

71. *Id.* at 2–3 & n.3.

72. *Norton*, 562 P.3d at 102–03.

73. *Weinshienk*, 670 F.2d at 919.

74. *Id.* at 919–20.

75. *Jenkins*, 676 P.2d at 1204.

76. *Id.* at 1203.

77. *Id.* at 1204 (citing *Ross v. Wells*, 127 N.E.2d 519, 521 (Ill.App.Ct. 1955)).

78. *Norton*, 562 P.3d at 102 (citing *Weinshienk*, 670 F.2d at 919).

79. *Id.* at 105. The *Norton* court stated further that public policy considerations "include whether the retaining lien is unenforceable—even if the Norton parties owe attorney fees to Ruebel—to avoid undue prejudice to the Norton parties in their litigation against Ruebel." *Id.*

80. *See id.* at 105 (public policy considerations in relation to enforcement of retaining liens include whether clients who owe "attorney fees are able to pay them or to post a bond that would adequately secure [the attorney's] interest in payment"); *People v. Egbune*, No. 15PDJ025, 2015 WL 6178409, at *1 (Colo. O.P.D.J. Oct. 5, 2015) (attorney violated Colo. RPC 1.16(d) when he "asserted a retaining lien on the clients' file even though they could not pay his outstanding attorney's fees"). *See also* CBA Ethics Op. 82 at 3 (retaining lien is unethical and will not be enforced when the client "is financially unable to post a bond or pay" the outstanding legal fees (quoting *Weinshienk*, 670 F.2d at 920)).

81. CBA Ethics Op. 82 at 3 (quoting *Weinshienk*, 670 F.2d at 920).

82. *Id.* (quoting ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1461 (1980)).