

# ATTORNEY'S LIEN

## A. DOCUMENTS

1. The following documents in a client's file belong to the attorney -
  - 1.1 Letters addressed to the attorney by the client.
  - 1.2 Copies of letters that the attorney wrote to the client.
  - 1.3 Notes the attorney made in a file for own use and for which the attorney does not charge the client eg. office memoranda, diary entries, notes of consultations and attendances, accounting records.
2. All other documents belong to either the client or to third parties.

## B. NATURE OF ATTORNEY'S LIEN

3. The below paragraphs set out the law pertaining to attorney's liens, as interpreted by the courts.
4. The attorney's lien is a debtor and creditor lien entitling the attorney to retain the documents subject to the lien until all fees and disbursements payable and pertaining to the subject matter are paid in full.
5. An attorney does not have a lien over documents that belong to him. Documents that belong to an attorney may be retained by him, irrespective of whether his fees have been paid.
6. An attorney has a lien over all documents belonging to his client or third parties which he actually attended to in the course of his mandate and in respect of which attendance he is entitled to charge a fee. These documents are therefore not only those drafted by the attorney but also those documents perused and considered in exercising the mandate.

7. An attorney does not have a lien over documents belonging to the client or third parties that are irrelevant or superfluous to his mandate.
8. If a client settles the account in full, thereby discharging the lien, and demands release of the file, the attorney is entitled to make copies of the documents that were *subject to the lien* (which he is required to keep in support of the firm accounting records) and charge the client for those copies.

## C PROBLEMS IN PRACTICE

9. In practice a number of problems are encountered when attorneys exercise their lien, for example -
  - 9.1 the client cannot pay the full fee immediately or the client disputes the extent of the attorney's fee but needs urgent access to his file to progress the matter;
  - 9.2 a client, having paid the fee, is faced with an enormous charge for copying the file when he requests its return.
10. In the aforesaid instances, the client may suffer significant prejudice through his inability to access his/her file.
11. It is therefore suggested that the Society adopt this guideline with a view to balancing the interests of the client and the attorney and with a view to promoting justice and equity.

## D. SUGGESTED RULES OF CONDUCT IN LITIGIOUS MATTERS

- (a) an attorney should, as far as practicably possible, ensure that he/she obtains a sufficient deposit and/or render regular interim accounts to enable the client to have a fair idea of his/her financial commitments to the attorney and to make timeous arrangements to meet these commitments;
- (b) an attorney should allow a client and/or the new attorney sufficient access to the client's file to enable him/her to gain sufficient information to progress the matter;
- (c) an attorney should, on receipt of a written undertaking by another attorney that the complete and unaltered file will be returned and written undertaking to pay all costs the

attorney may be entitled to, in law, make the file available to that other attorney to enable him/her to copy such documents as he/she may require to progress the matter;

- (d) an attorney, whose mandate has been terminated and whose fees have been paid in full, shall be entitled to make copies of the documents that were subject to his/ her lien before handing over the file but shall not charge more for making the copies than the charges stipulated in the High Court tariff;
- (e) an attorney shall not be allowed to retain the file until his charges for copying are paid but shall be obliged to hand over the file once fees arising from the exercise of the mandate have been paid and the lien discharged;
- (f) an attorney, whose mandate is terminated and whose fees have been paid in full, should immediately, on instructions of the former client, hand over all documentation;
- (g) an attorney whose mandate is terminated shall immediately file a notice of withdrawal as the attorney of record in that matter;
- (h) the new attorney should afford the former attorney all reasonable access to documents, if the file has been handed over, to enable the former attorney to take photocopies or to obtain such information as may be necessary for the purposes of drawing a bill of costs;
- (i) when retaining documents subject to a lien, the attorney should, as soon as reasonably possible, agree the fee with the client or, failing agreement, tax the bill.