

PROFESSIONAL LIABILITY UPDATE

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*Fletcher v. Davis* (2004) 33 Cal.4<sup>th</sup> 61

*A lien against a client's future judgment or recovery is an interest adverse to the client and must comport with the informed written consent requirements of Rule 3-300 of the Rules of the Professional Conduct.*

Pursuant to an oral agreement Master Washer retained Freddie Fletcher in a lease dispute and agreed to pay all costs and hourly fees from any judgment or settlement.

Master Washer discharged Fletcher and resolved the dispute with new counsel by obtaining a judgment. The proceeds of the judgment were disbursed without regard to Fletcher's lien. Fletcher filed an action against Master Washer, its counsel, and the underlying parties alleging they had notice of his lien.

The trial court sustained the demurrers of Fletcher's new counsel and the underlying parties because Fletcher could not plead facts showing the perfection of the lien or that defendants had notice of lien. The Court of Appeal reversed, holding, among alternate grounds, that Fletcher's lien did not have to be in writing to be valid. [PL Update No. 153]

The Supreme Court reversed reasoning that a charging lien grants the attorney considerable authority to detain all or

part of the client's recovery whenever a dispute arises over the lien's existence or its scope. Such a fee arrangement is unquestionably an adverse interest within the meaning of Rule 3-300 and thus requires the client's informed written consent.

A client's informed written consent ensures that the client truly agrees to the creation of the lien, making it less likely that a disagreement will arise that could lead to litigation or other actions adverse to the client.

*Comment:* Charging liens are typical in contingency fee agreements. The discussion at Rule 3-300 states it does not apply to initial retainer agreements, unless the attorney obtains an adverse pecuniary interest. Now that a charging lien has been defined as an adverse pecuniary interest, practitioners would be wise to review their agreements for compliance with Rule 3-300, including the advice to seek independent counsel.