

## APPELLATE TIP: RECORDING FEES AWARDS

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This month's appellate tip concerns recording fees awards. Recording an attorneys' fees award against another party can be necessary to ensure payment of the fees award. The holder of a money judgment (called a "judgment creditor") may place a lien on the debtor's real property, which gives the judgment creditor the right to recover the judgment award from any sale of the property. *Freeman v. Wintroath Pumps—Div. of Worthington Corp.*, 13 Ariz. App. 182, 184, 475 P.2d 274, 276 (1970). What happens, then, when the court awards you attorneys' fees in the middle of a case—for example, for responding to a frivolous motion, or for attending a deposition to which the opponent failed to show? Can you record that order immediately?

The answer is "no," unless the fee award also disposes of at least one claim, or disposes of all claims against one party. In that case, you must still request Rule 54(b) language to make it a "final, appealable judgment" before it can be recorded.

A.R.S. 33-961 states that "judgments" may be filed and recorded to become a lien of the judgment debtor's property: "A certified copy of the judgment of any court in this state may be filed and recorded in the office of the county recorder in each county where the judgment creditor desires the judgment to become a lien on the real property of the judgment debtor."

*Sysco Arizona, Inc. v. Hoskins*, 235 Ariz. 164, 330 P.3d 354 (App. Div.1 2014), holds that only "final" judgments may be recorded. There, the court held that an unsigned minute entry order awarding \$398,598.00 plus interest, and which referenced a "formal written Proposed Order of Judgment" signed by the court and filed by the clerk, was not a final judgment. As such, the judgment creditor's recording of the unsigned minute entry did not create a valid, enforceable judgment lien. See also, *Lamb v. Super. Ct.*, 127 Ariz. 400, 403, 621 P.2d 906, 910 (1980) ("[A] minute entry, even though incorporating an order, lacks the legal effect of a formal judgment, decree or order, since it is not signed by the court.").

**Importantly, any attempt to record a fees award that does not stem from a final judgment might be considered a "false lien," and could open the filer to liability.**

This means that if you want to make sure you can record your interim award of attorneys' fees and have it function as a valid lien, you will need to reduce any minute entry order to a formal order that includes Rule 54(b) language (not Rule 54(c) language if the fee award is only an interim ruling). Again, however, Rule 54(b) or 54(c) language is only appropriate when the judgment resolves some or all of the claims before the court. Consequently, you must wait to perfect the lien until after the court has issued a final judgment on some or all of the claims. You cannot record the award until it is included in a judgment containing Rule 54 (b) or (c) language.