ESPINOSA, J., dissenting. In this case of first impression, the defendants Carlo Forzani and Carlo Forzani, LLC,[1] claim that they were entitled to an equitable charging lien for their attorney's fees that arose by operation of law when they obtained a judgment for their client in the underlying marital dissolution action. The majority concludes that the defendants may be able to acquire an equitable charging lien if, on remand, the trial court makes certain findings that demonstrate that the parties had intended for the attorney's fees of the defendants to be paid from particular assets divided as part of the judgment. Respectfully, I disagree with the majority's conclusion and, in light of prevailing principles of public policy, conclude that the defendants should be precluded from asserting such a lien on a judgment in a marital dissolution action. I agree with the conclusion of the trial court that the defendants are not entitled to an equitable charging lien, however, I disagree with its reasoning in reaching its conclusion. I, therefore, respectfully dissent from the majority and would affirm the judgment of the trial court on the following alternate grounds.[2]

Neither this court nor our Supreme Court has squarely addressed the issue of whether an attorney may acquire an equitable charging lien in a dissolution action. As a result, in concluding that such a charging lien is permissible under certain circumstances, the majority relies heavily on the law of other states, secondary sources and an analogy that it draws between dissolution actions and other general civil actions in Connecticut.[3] Preliminarily, most of the cases from jurisdictions other than Connecticut cited by the majority have dealt with charging liens only in the context of general civil actions and, therefore, fail to consider the unique policy concerns raised by the payment of an attorney's fee in a dissolution action. Moreover, the cases cited that have addressed charging liens in dissolution actions are distinguishable from the present case. See, e.g., *Sinclair*, *Louis*, *Siegel*, *Heath*, *Nussbaum & Zavertnik*, *P.A.* v. *Baucom*, 428 So. 2d 1383, 1384 (Fla. 1983) (evaluating validity of attorney charging lien asserted against *settlement proceeds*). Accordingly, I find the majority's reference to the law of other states to be unpersuasive.

Similarly, the majority has cited no Connecticut case with precedential value in which an equitable charging lien in a dissolution action has been upheld and, instead, analogizes to general civil actions that have recognized the validity of such liens. See, e.g., *D'Urso* v. *Lyons*, 97 Conn. App. 253, 903 A.2d 697, cert. denied, 280 Conn. 928, 909 A.2d 523 (2006); *Perlmutter* v. *Johnson*, 6 Conn. App. 292, 298, 505 A.2d 13, cert. denied, 200 Conn. 801,

509 A.2d 517 (1986), cert. denied, 479 U.S. 1035, 107 S. Ct. 886, 93 L. Ed. 2d 839 (1987). I am not persuaded by the majority's analogy because frequently, as in this case, the issues and policy concerns raised in dissolution actions are inherently different from other civil actions. In particular, because of the unique issues presented in domestic relations matters, there is a heightened aversion to arrangements in which an attorney gains any pecuniary interest by virtue of the judgment rendered in a dissolution action.

Rule 1.5 (d) of the Rules of Professional Conduct provides in relevant part: "A lawyer shall not enter into an arrangement for, charge, or collect: (1) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a dissolution of marriage or civil union or upon the amount of alimony or support, or property settlement in lieu thereof . . . ." The plain language and official commentary to the rule indicate that rule 1.5 specifically prohibits contingency fee arrangements in dissolution actions; the rule and its commentary, however, are silent regarding the permissibility of charging liens. Accordingly, unlike the trial court, I do not read the express language of rule 1.5 (d) (1) as prohibiting an attorney from asserting a charging lien in a dissolution action. I do, however, believe that the defendant should be precluded from asserting an equitable charging lien on the judgment in a dissolution action in light of the public policy underlying rule 1.5 (d) (1). This court previously has explained that "[t]he main policy concern behind rule 1.5 (d) is that contingency agreements for a dissolution action would discourage lawyers from advocating for an amicable settlement because the lawyers would have a *pecuniary interest* in the outcome of the dissolution action." (Emphasis added.) *Gil* v. *Gil*, 110 Conn. App. 798, 804–805, 956 A.2d 593 (2008).

In rejecting the trial court's conclusion that the recognition of a charging lien in a dissolution action would violate rule 1.5 (d) (1), the majority states that "[t]he recognition of a charging lien . . . would not tie the attorney's fees in a dissolution of marriage action . . . to the outcome of the case . . . ." While I agree that such a lien does not violate the express terms of the rule, I respectfully disagree with the majority's assertion as it applies to this case because the charging lien sought by the defendants, by necessity, tied the defendants' ability to obtain their fee to the outcome of the case. This court previously has described a charging lien as "a lien placed upon any money recovery or fund due the client *at the conclusion of suit*." (Emphasis added.) *Marsh, Day & Calhoun* v. *Solomon*, 204 Conn. 639, 643, 529 A.2d 702 (1987). The defendants claim that they obtained a perfected charging lien by operation of law when they "successfully obtained a judgment for [their] client that included a property distribution award." On the basis of their own argument, the defen-

dants' ability to assert a charging lien was predicated on the court first rendering a judgment of dissolution accompanied by certain financial orders. Therefore, even in the absence of a contingency fee arrangement, the defendants still had a pecuniary interest in the outcome of the dissolution action. As a result, I believe that allowing the defendants to assert an equitable charging lien against the judgment in a marital dissolution action would undermine the public policy concern underlying rule 1.5 (d).

Because the defendants' ability to obtain their fee by way of the equitable charging lien they assert would be dependent on the court first rendering a judgment of dissolution, this type of lien poses the same risk presented by a contingency fee arrangement. Although the interest does not directly relate to the amount of a fee, it nonetheless is significant in that it directly relates to an attorney's ability to recover his fee. Allowing attorneys to assert an equitable charging lien against judgments in marital dissolution actions presents an inherent danger of discouraging them from advocating for amicable settlements for their clients as they could not assert such a lien if the parties determined that settlement, rather than a judgment of dissolution with corresponding financial orders, was in their best interest. Accordingly, I would conclude that the same policy concern underlying the prohibition against attorneys entering into contingency fee arrangements in dissolution actions likewise should counsel against recognizing such a lien in the present type of case and thus prohibit the defendants from asserting an equitable charging lien against the dissolution judgment in this case.[4]

For the foregoing reasons, I would affirm the judgment of the trial court.

[1] James F. Jordan III and Diane M. Jordan were also defendants in the underlying action. Because they are not parties to this appeal, for convenience, we refer to Carlo Forzani and Carlo Forzani, LLC, as the defendants.

[2] Because I agree with the majority's recitation of the facts, they need not be reiterated here.

[3] The majority also has concluded that rule 1.8 (i) (1) of the Rules of Professional Conduct permits an attorney to assert a charging lien in a dissolution action. Rule 1.8 (i) provides in relevant part: "A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may: (1) Acquire a lien granted by law to secure the lawyer's fee or expenses . . . ." Effectively, the majority concludes that the absence of an express prohibition in the rule against an equitable charging lien in a dissolution of marriage action indicates that such liens are permissible. I respectfully disagree in light of the language of the official commentary for rule 1.8. The official commentary for rule 1.8 (i) provides in relevant part: "Subsection (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. . . . In addition, subsection (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. *The law of each jurisdiction determines which liens are authorized by law.* These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client." (Emphasis added.) As I noted previously, there does not appear to be any Connecticut precedent that directly has addressed whether an attorney may assert an equitable charging lien in a marital dissolution action; nor is there any state statute governing this issue. For the reasons set forth in this dissent, I believe that the public policy underlying

rule 1.5 (d) (1) as previously expressed by this court in *Gil* v. *Gil*, 110 Conn. App. 798, 804–805, 956 A.2d 593 (2008), should preclude the defendants from asserting such a lien. Under this analysis, an equitable charging lien in a marital dissolution action would not be authorized by Connecticut law and, therefore, would not be the type of permissible lien contemplated by rule 1.8 (i) (1).

[4] My conclusion in this dissent is confined to equitable charging liens asserted against judgments in marital dissolution actions in light of the unique policy concerns raised by dissolution actions. I do not question the legitimacy of an otherwise valid equitable charging lien in the context of other types of civil actions.