

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
06G0598 & 06G0641

IN THE MATTER OF

Mark I. Farbman,
Attorney At Law

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REPRIMAND

On April 24, 2008 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by N. V and R. C.

Pursuant to Section .0113(a) of the Discipline and Disability Rules of the North Carolina State Bar, the Grievance Committee conducted a preliminary hearing. After considering the information available to it, including your response to the letter of notice, the Grievance Committee found probable cause. Probable cause is defined in the rules as "reasonable cause to believe that a member of the North Carolina State Bar is guilty of misconduct justifying disciplinary action."

The rules provide that after a finding of probable cause, the Grievance Committee may determine that the filing of a complaint and a hearing before the Disciplinary Hearing Commission are not required, and the Grievance Committee may issue various levels of discipline depending upon the misconduct, the actual or potential injury caused, and any aggravating or mitigating factors. The Grievance Committee may issue an admonition, a reprimand, or a censure to the respondent attorney.

A reprimand is a written form of discipline more serious than an admonition issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a censure.

The Grievance Committee was of the opinion that a censure is not required in this case and issues this reprimand to you. As chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this reprimand.

You regularly represent clients for personal injury settlements. When you collect funds from your clients' insurance carriers for medical payments benefits, you state that you charge your client an hourly fee for the services you perform in obtaining the med pay benefits, but then you discount that fee so that the fee the client pays for those services "is in line with" the fee they pay for the liability portion of the claim, usually 33.3%. The net result of this is that you are not

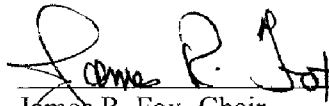
charging a reasonable fee based on services rendered but rather a percentage of the med pay coverage, or a sliding fee based on the amount of the coverage, in violation of Rule 1.5(a) of the Rules of Professional Conduct as interpreted by RPC 174.

Your contract for legal services in cases of personal injury claims states "The party of the second part is hereby given a lien on any settlement, recovery, or judgment obtained in said matter as security for the payment of said attorney's fee and costs properly advanced by said attorney." This provision misstates the law and misleads the client by suggesting that you have a lien on any recovery obtained by the client even if the fund is recovered after you have been discharged, in violation of Rule 7.1(a) of the Rule of Professional Conduct.

You are hereby reprimanded by the North Carolina State Bar for your professional misconduct. The Grievance Committee trusts that you will heed this reprimand, that it will be remembered by you, that it will be beneficial to you, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession.

In accordance with the policy adopted October 15, 1981 by the Council of the North Carolina State Bar regarding the taxing of the administrative and investigative costs to any attorney issued a reprimand by the Grievance Committee, the costs of this action in the amount of \$100.00 are hereby taxed to you.

Done and ordered, this the 19th day of May, 2008


James R. Fox, Chair
Grievance Committee

JRF/lr