

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
02G0163

IN RE: ROBERT J. WILLIS,
 ATTORNEY AT LAW

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REPRIMAND

On 17 July 2002, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the North Carolina State Bar.

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 and I am certain that you will understand fully the spirit in which this duty is performed.

On or about 13 September 1999, you entered into an agreement with one Juan S. Rodriguez to represent him in a wage and hour claim against his employer, which was comprised of three separate, but related, entities. Had Mr. Rodriguez fully prevailed on his claim against all

three entities, he would have been entitled to \$7,261 in total damages, including both actual and liquidated damages.

You had a written agreement with Mr. Rodriguez under which you were to receive a 33 1/3% contingency fee, plus any expenses and court costs, if the case was settled or decided after the filing of suit. Your contract stated that you would also be entitled to any attorneys' fees awarded by the court or negotiated through settlement, but there would be a "dollar for dollar credit" against the contingency fee in such event. Your contract also required Mr. Rodriguez to pay the expenses and court costs regardless of outcome.

You filed a lawsuit on behalf of Mr. Rodriguez shortly after taking the case, on or about 27 September 1999. On or about 13 December 2000, the court granted partial summary judgment in favor of Mr. Rodriguez against the primary entity for actual damages of \$2,770.50. While there was still an open question whether your client would be awarded liquidated damages against this entity and any damages against the other two entities, it was clear that Mr. Rodriguez would receive at least part of his claim after this order. Further, 29 U.S.C. 216(b) would at this point now require an award of reasonable attorneys' fees by the court, but the amount would be at its sound discretion.

Thereafter, you entered into settlement negotiations with the defendants for a lump sum inclusive of both your client's damages and your attorneys' fees. Moreover, you also began to negotiate with your client regarding the split of any lump sum settlement, disregarding the contingency fee provision of your contract. You have said that Mr. Rodriguez initially agreed to accept a settlement of \$20,000 with him receiving \$10,000 and you receiving \$10,000, a fifty-fifty split of the settlement amount. You stated that you demanded \$22,000 and did not indicate any different division of that amount. You then stated that you responded to an offer of \$12,000 with a counter offer of \$19,000. You did not indicate any different split of those proceeds. You then settled for \$15,500 after your client agreed to accept a new division of the proceeds whereby you received \$10,000 and he received \$5,500.

The end result is that your share of the lump sum settlement increased to nearly two-thirds of the lump sum proceeds. Not only that, but under your demands and counter-offers before final settlement, your client would have received at least as much as his maximum damages, if not more, but with the renegotiated division, he received less than his full claim while the amount of your fee from the proceeds was not reduced at all. Your client also received less than what he would have received had the court granted liquidated damages on the claim for which summary judgment was granted regardless of the results on the other parts of his claim.

Each time you discussed a new division of the settlement proceeds, you were renegotiating your fee agreement with your client. Once you began renegotiating your fee based on the amount of proposed settlement, your own interest in maximizing your fee conflicted with your client's interest in maximizing his award. There were no changes in circumstances other than the amount offered by the opposing side to settle. As an attorney, your primary obligation was to represent your client's interest, not maintain your fee at his expense. The only party whose interest in the lump sum settlement was compromised was your client's. As comment 3 to Rule 1.5 of the Revised Rules of Professional Conduct states, once your fee agreement has been established, your ethical obligation is to represent your client's best interests regardless of

whether you have struck an unfavorable bargain for yourself. Further, by taking nearly two-thirds of the settlement as your fee, your fee became clearly excessive under the circumstances. As a result, your client was prejudiced since he received less than he should have.

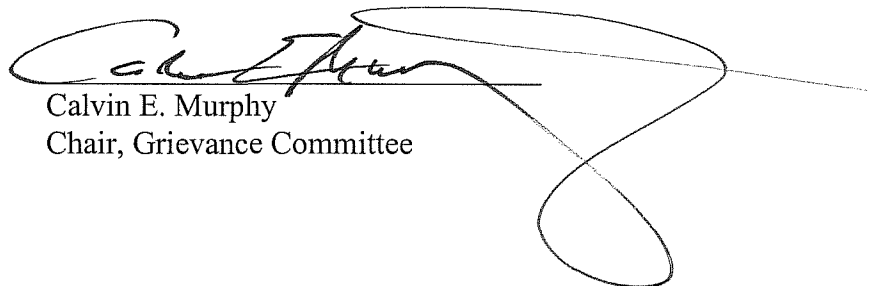
The Committee found that your above-described conduct violated Rules 1.5, 1.7(b), and 8.4(a) and (g) of the Revised Rules of Professional Conduct.

In deciding to issue a Reprimand, the Committee also considered the aggravating and mitigating factors. In aggravation, the Committee considers that you had a selfish motive and that your client was vulnerable as an alien in this country. In mitigation, the Committee notes that you had no prior disciplinary record.

You are hereby Reprimanded by the North Carolina State Bar due to 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 \$50.00 are hereby taxed to you.

Done and ordered, this 27th day of July, 2002.



Calvin E. Murphy
Chair, Grievance Committee