

In the Matter of W. Clifford Girard, Bar No. 02358, File No. 10-0671, effective 03/23/2011. Attorney Reprimanded, Restitution and costs imposed.

Pursuant to Rule 57(a)(4)(A), Ariz.R.Sup.Ct., the PDJ approved the direct Agreement for Discipline by Consent submitted by the parties and reprimanded W. Clifford Girard.

In November 2007, Respondent met with Margaret Locatelli and her son Michael Locatelli regarding a criminal matter. Both Margaret and Michael signed a fee agreement on November 1, 2007 and Margaret paid Respondent \$10,000 to represent Michael in three separate criminal matters. The criminal charges included a misdemeanor alcohol charge in Tempe Municipal Court, two counts of D.U.I. in Chandler Municipal Court, and a D.U.I. charge and felony possession of marijuana charge in Maricopa County Superior Court.

Although the fee agreement stated the fee was "earned when paid," Margaret believed she was paying a retainer of \$10,000 to be applied towards the fees and costs incurred during the representation. Respondent wrote "Retainer" on the agreement but intended the fee to be a "flat fee." Respondent deposited the \$10,000 in his trust account and withdrew funds as fees were earned and costs incurred. On December 19, 2007, Margaret requested her account be closed and asked for an accounting and refund of any remaining balance of the retainer. Respondent ultimately responded to the request on February 3, 2008 and stated that he will be sending a proportionate refund. On June 27, 2008, an accounting was sent to Margaret and informed her that a refund was forthcoming. On April 8, 2010, Margaret again requested a refund.

Respondent negligently failed to promptly provide an accounting, failed to promptly refund unearned funds and knowingly mislead the client's mother (Ms. Margaret Locatelli) by indicating a refund would be forthcoming.

Respondent's misconduct constituted grounds for the imposition of discipline pursuant to the Rules of the Supreme Court of Arizona and violated Rule 42, ERs 1.15(d) (failure to provide notice upon receipt of funds/property and an accounting upon request) and 4.1 (truthfulness in statements to others).

In evaluating aggravating and mitigating factors, the following factors were found: in aggravation, factor 9.22(i) (substantial experience in the practice of law) was found; and in mitigation, factors 9.32(a) (absence of prior disciplinary history), 9.32(b) (absence of dishonest or selfish motive), 9.32(e) (cooperative attitude toward proceedings), and 9.32(g) (character or reputation) were found.

The agreement is accepted and costs awarded in the amount of \$1,200. The proposed final judgment and order is reviewed, approved and signed.