

In the Matter of Anthony Giammarco, Bar No. 005718; No. 10-1036.

04/13/2011. *Attorney Admonished with Two Years Probation.*

The PDJ approved a Conditional Agreement for Discipline by Consent dated April 12, 2011, submitted by the parties and admonished Anthony Giammarco, Bar No. 005718 placing him on probation for two years requiring Law Office Management Assistance Program compliance (LOMAP) and a Practice Monitor.

Respondent has been admitted to practice in Arizona since 1979. On December 23, 2009, he was retained to represent his client in a dissolution matter. Respondent charged an initial earned-upon-receipt fee of \$5,000 and attempted to notify his client by letter of this. However, the written fee agreement clarified it was not a flat or fixed fee but rather that Respondent would bill at an hourly rate. He did not inform his client that should he discharge Respondent the client may be entitled to a refund of all or part of the fee. When the dissolution matter concluded by consent decree, his client had a remaining credit balance on April 1, 2010, of \$3,094. When his client requested the refund, Respondent refused, writing his client he was "not entitled to a refund of any portion of the \$5,000." While Respondent attempted to negotiate with his client for a settlement of the fees, only after the intervention of the Bar and probable cause being found on September 29, 2010, did Respondent refund the \$3,094 on October 11, 2010.

Respondent has four prior disciplinary offenses each resulting in an admonition on April 29, 1983, October 13, 1987, February 3, 1994 and May 6, 2004.

Respondent's misconduct constituted grounds for the imposition of discipline pursuant to the Rules of the Supreme Court of Arizona, and violated Rule 42, ER 1.5(a) and 1.5(d), Ariz.R.Sup.Ct.