

**FILED**

DEC 14 2006

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA

**BEFORE THE DISCIPLINARY COMMISSION  
OF THE SUPREME COURT OF ARIZONA**

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4 IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA, )

No. 05-0098

5 **TROY L. BROWN,** )  
6 **Bar No. 016400** )

**DISCIPLINARY COMMISSION  
REPORT**

7 **RESPONDENT.** )  
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This matter came before the Disciplinary Commission of the Supreme Court of Arizona on October 14, 2006, pursuant to Rule 58, Ariz. R. Sup. Ct., for consideration of the Hearing Officer's Report filed June 23, 2006, recommending a five-month suspension, two years of probation with the State Bar's Law Office Management Assistance Program (LOMAP), including a practice monitor, restitution, and costs. Respondent filed an objection and requested oral argument, but did not file an opening brief. The Respondent and counsel for the State Bar were present.

At oral argument, Respondent asserts that when he removed funds from the client trust account, he had a fee agreement with the client to pay attorney fees. Respondent further asserts that the funds represented earned fees and he had the husband's consent to remove the funds. Respondent further asserts that the trade of furniture for services was not an adverse situation and there was 100 percent fair dealing with the client. Respondent maintains that the furniture for services arrangement was a standard, arms-length transaction in which Rule 1.8(a) does not apply.

Respondent admits to allowing the trust account to fall below the required balance but argues that the recommended sanction is unduly harsh. In his post hearing brief,

1 Respondent asserts that his mishandling of his trust account was merely negligent and an  
informal reprimand is the appropriate sanction.

2 The State Bar argues that Respondent failed to prove that the Hearing Officer's  
3 findings were clearly erroneous. The record supports that the client did not give  
4 Respondent permission to remove the client funds held in trust for his attorney fees. The  
5 State Bar further argues that the client felt pressured by Respondent to turn over the  
6 proceeds of her house and to take a credit for furniture that she needed the money for and  
7 then charged her a fee to respond to the Complaint in this matter. The State Bar asserts  
8 that suspension is the appropriate sanction and restitution is a valid remedy in this  
9 situation.  
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11 The Disciplinary Commission considered Respondent's Notice of Lack of Candor  
12 filed October 19, 2006, and determined that it would not affect the Commission's decision  
13 in this matter. The State Bar's Motion to Strike Respondent's Notice of Lack of Candor to  
14 Tribunal by State Bar Counsel filed October 25, 2006, is denied as moot.  
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### 16 Decision

17 The seven members<sup>1</sup> of the Disciplinary Commission unanimously recommend  
18 accepting and adopting the Hearing Officer's findings of fact, conclusions of law, and  
19 recommendation for a five-month suspension, two years of probation (LOMAP), including  
20 a practice monitor, restitution, and costs of these disciplinary proceedings.<sup>2</sup> The two-year  
21 period of probation is effective upon the signing of the probation contract. The amount of  
22 restitution and terms of probation are as follows:  
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25 <sup>1</sup> Commissioner Baran did not participate in these proceedings. One public member seat remains  
26 vacant.

<sup>2</sup> A copy of the Hearing Officer's Report is attached as exhibit A.

**Restitution**

1 Susan M. DeZonia \$4,923.64 plus 10% interest per annum from December 10,  
2 2004 until paid.

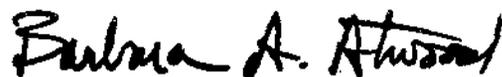
3 **Terms of Probation**

4 1. Within 30 days of the final Judgment and Order, Respondent shall contact  
5 the LOMAP director and undergo a LOMAP assessment. Respondent thereafter, shall  
6 enter into a LOMAP contract and comply with the recommendations made by the LOMAP  
7 director or designee.  
8

9 2. Respondent shall obtain a practice monitor, approved by bar counsel and  
10 the LOMAP director.

11 3. In the event that Respondent fails to comply with any of the foregoing  
12 conditions, and the State Bar receives information, bar counsel shall file with the Hearing  
13 Officer a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The  
14 Hearing Officer shall conduct a hearing within thirty days after receipt of said notice, to  
15 determine whether the terms of probation have been violated and if an additional sanction  
16 should be imposed. In the event there is an allegation that any of these terms have been  
17 violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by  
18 clear and convincing evidence.  
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20 RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of December, 2006.  
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Barbara A. Atwood, Chair  
25 Disciplinary Commission  
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Original filed with the Disciplinary Clerk  
this 14<sup>th</sup> day of December, 2006.

Copy of the foregoing mailed  
this 14<sup>th</sup> day of December, 2006, to:

Neal C. Taylor  
Hearing Officer 8I  
*Burns, Nickerson & Taylor*  
111 West Monroe, Suite 1500  
Phoenix, AZ 85003-1742

Troy L. Brown  
Respondent  
1757 East Baseline Road, Suite 130  
Gilbert, AZ 85233-001

Shauna R. Miller  
Senior Bar Counsel  
State Bar of Arizona  
4201 North 24th Street, Suite 200  
Phoenix, AZ 85016-6288

by: *W. Smith*

/mps