

FILED

JAN 04 2008

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

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY *M. Smith*

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2
3 IN THE MATTER OF A MEMBER)
4 OF THE STATE BAR OF ARIZONA,)

No. 06-0972

5 **ROBERT M. HERSCH,**)
6 **Bar No. 007929**)

**DISCIPLINARY COMMISSION
REPORT**

7 **RESPONDENT.**)
8)

9 This matter came before the Disciplinary Commission of the Supreme Court of
10 Arizona on December 8, 2007, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of
11 the Hearing Officer's Report filed October 5, 2007, recommending acceptance of the
12 Tender of Admissions and the Agreement for Discipline by Consent (Tender) and the Joint
13 Memorandum (Joint Memorandum) in Support of Agreement for Discipline by Consent
14 providing for censure, one year of probation with the State Bar's Law Office Management
15 Assistance Program (LOMAP), and costs.

16 **Decision**

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18 Having found no facts clearly erroneous, the nine members of the Disciplinary
19 Commission unanimously recommend accepting and incorporating the Hearing Officer's
20 findings of fact, conclusions of law, and recommendation for censure, one year of
21 probation (LOMAP), and pay costs of these disciplinary proceedings within 30-days of the
22 date of the Supreme Court's final Judgment and Order.¹ The terms of probation are as
23 follows:
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26 ¹ A copy of the Hearing Officer's Report is attached as Exhibit A.

Terms of Probation

1 1. Within 30-days of the date of the final Judgment and Order, Respondent
2 shall contact the LOMAP director and submit to a LOMAP audit of his office trust account
3 policies and procedures. Thereafter, the LOMAP director shall develop a probation
4 contract and its terms shall be incorporated herein by reference.

5 2. The probation period will be effective the date of the final Judgment and
6 Order and will conclude one year from the date that all parties have signed the probation
7 contract.

8 3. Respondent and his chosen Certified Public Accountant shall conduct a
9 three-way reconciliation of the trust account general ledger, all individual client ledgers,
10 and all bank statements to determine the extent of any other bookkeeping errors resulting
11 in shortages of client funds held in trust. Respondent and LOMAP shall develop and
12 execute internal controls and procedures through which any other shortages are remedied
13 immediately and future occurrences can be presented to be included as terms and
14 conditions of probation.

15 4. Respondent shall refrain from engaging in any conduct that would violate
16 the Rules of Professional Conduct or other rules of the Supreme Court of Arizona.

17 5. In the event that Respondent fails to comply with any of the foregoing
18 conditions, and the State Bar receives information, bar counsel shall file with the imposing
19 entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The
20 Hearing Officer shall conduct a hearing within 30-days after receipt of said notice, to
21 determine whether the terms of probation have been violated and if an additional sanction
22 should be imposed. In the event there is an allegation that any of these terms have been
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violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by
clear and convincing evidence.

RESPECTFULLY SUBMITTED this 4th day of January, 2008.



J. Conrad Baran, Chair
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 4th day of January, 2008.

Copy of the foregoing mailed
this 4th day of January, 2008, to:

Bruce G. Macdonald
Hearing Officer 6M
McNamara, Goldsmith, Jackson & Macdonald, P.C.
1670 East River Road, Suite 200
Tucson, AZ 85718

Michael Drake
3085 W. Ina Road, Suite 111
Tucson, AZ 85741
Respondent's Counsel

Mathew E. McGregor
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: M. Smith

/mps