PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of	**04-O-11939**
CAROLINE SUE STERNBERG	**OPINION ON REVIEW**
A Member of the State Bar.	

The State Bar is appealing the decision of a hearing judge recommending, inter alia, that respondent, Caroline Sue Sternberg, be actually suspended for 30 days for failing to maintain client funds in her Client Trust Account (CTA) and for gross negligence involving moral turpitude. This is not a circumstance where an attorney personally committed misappropriation or commingling. Rather, respondent's husband was able to repeatedly withdraw funds from her CTA during a 13-month period as the result of her failure to review her monthly statements and reconcile the account. The State Bar characterizes respondent's state of mind as "willfully oblivious," but it does not assert that respondent knew of or authorized the withdrawals. The State Bar contends that respondent's actions constitute an abdication of her fiduciary duty to manage her CTA, and it urges that the appropriate discipline is a three-year suspension, stayed, with a three-year probationary period, with conditions, including 12 to 18 months' actual suspension.[1] The State Bar also asks that we find additional culpability based on respondent's failure to render an accounting, her commingling of personal funds in her CTA, and uncharged misconduct arising from her testimony in the hearing below.

[1]There is some confusion about the level of discipline the State Bar is seeking because it asserts in its Opening Brief that both a one-year and 18 months' actual suspension are appropriate. In the hearing department, it sought 18 months' actual suspension. Yet at oral argument, the State Bar cited *Edwards v. State Bar* (1990) 52 Cal.3d 28 as the most relevant discipline case, which imposed a one-year actual suspension.

Respondent argues that she was merely negligent in failing to properly supervise her CTA and contends that the appropriate discipline should be no more than the hearing judge's recommended discipline.

Upon our de novo review (*In re Morse* (1995) 11 Cal.4th 184, 207), we decline to find additional culpability for uncharged misconduct and we modify some of the hearing judge's culpability, aggravation, and mitigation findings as discussed *post*. Ultimately, we adopt the hearing judge's recommended discipline.

I. PROCEDURAL AND FACTUAL BACKGROUND

Many, but not all, of the facts that are material to our culpability determinations are subject to a stipulation by the parties. Respondent is a family law practitioner admitted to practice in California on December 20, 1985, and she has no prior record of discipline. Between 1999 and 2004, her husband, Ken Sternberg, who was not an attorney, acted as her office manager.[2]

Respondent delegated most banking responsibilities to her husband, including interfacing with the bank. Mr. Sternberg was responsible for paying the bills, making deposits into and withdrawals from the general account and making deposits into the CTA. He also was authorized to endorse respondent's name to retainer checks, and he reviewed the monthly bank statements. However, respondent maintained exclusive control of the CTA checkbook and was the only authorized signatory to the CTA, which she seldom used. She therefore believed it was unnecessary to review or reconcile her monthly bank statements on a regular basis. Unfortunately, respondent was seriously mistaken.

In October 2000, Rodney Cash hired respondent in his marital dissolution matter, and he signed a retainer agreement, which acknowledged his payment of a $2,500 fee. Between October 11, 2000 and December 19, 2002, respondent billed Cash on a regular basis, and he paid $22,221 in fees and costs during that period.[3]

---

[2]Mr. Sternberg was diagnosed with cancer in late July or early August 2004 and passed away after the conclusion of the trial.

[3]Cash testified that he did not receive some of the invoices, but the hearing judge found that his testimony lacked credibility on this issue based on his demeanor and inability to recall

In March 2003, Cash's matter settled and the court ordered his wife to pay him $39,250 as an equalization payment for the community property estate. On April 22, 2003, respondent notified Cash in a letter that the payment was forthcoming, and described the actions she intended to take when the check arrived. On June 18, 2003, respondent sent Cash an acknowledgment of her receipt of the $39,250 settlement check, which was deposited into her CTA on June 19, 2003. After deduction of the agreed-upon fees and costs, the balance owed to Cash was $24,854.50.

Between June 2003 and July 2004, respondent's husband made 16 unauthorized withdrawals from the CTA without her knowledge and transferred the funds to his own personal account for office and personal expenses. Mr. Sternberg avoided using the CTA checkbook by transferring funds by means of cash withdrawals, bank checks, money orders and telephonic transfers. Between August 29, 2003 and July 12, 2004, the balance of the CTA fell below $24,854.50 seven times. On four of those occasions, the balance was one-half or less of the required $24,854.50.

Cash testified that he made 30-40 calls to respondent's office after the settlement funds were received by the law firm, that he spoke to her staff members about the status of his case and that he requested that his settlement be disbursed to him. He further testified that respondent never returned his calls or communicated with him. This testimony was contradicted by respondent's files, which memorialized numerous phone calls, and showed that respondent regularly communicated with Cash by telephone and in writing about the status of his divorce case. Respondent's records make no reference to any request by Cash for his settlement funds, which corroborated respondent's testimony that he did not raise this issue during any of their communications.[4]

---

specific details. Such credibility determinations by the hearing judge, who had the opportunity to observe the witness firsthand, are entitled to great weight (*In re Gossage* (2000) 23 Cal.4th 1080, 1096; Rules Proc. of State Bar, rule 305(a)), and we find nothing in the record to overturn this finding.

[4]It seems implausible that Cash, a teacher by profession, who was in the throes of a divorce case, would *not* ask for the $24,854 during the 13 months when the funds remained in respondent's CTA. However, the hearing judge determined that Cash's testimony in this regard

Cash also testified that he sent two letters to respondent requesting distribution of the funds and demanding an accounting. The first letter, dated January 27, 2004, was sent by facsimile to respondent by someone in the office at the school where Cash's wife worked. The second letter, dated March 23, 2004, was sent by certified mail, return receipt requested, and was returned to Cash unopened with the notation "not accepted." The hearing judge found Cash's testimony about the letters lacked credibility and that, indeed, the letters were fraudulent. Again, we give deference to the hearing judge's credibility determination; however, the record does not support the hearing judge's finding that the January 27 and March 23 letters were fraudulent. Even if we were to consider the letters for the truth of the matters asserted therein, as requested by the State Bar, they do not support a finding that respondent actually received them and therefore she was aware of Cash's requests for distribution of the funds and demand for an accounting.

Cash complained to the State Bar in March 2004, prompting it to send two letters to respondent, the first on April 20, 2004 and the second on June 22, 2004. Respondent maintains she only received the second letter. On July 15, 2004, Mr. Sternberg transferred $3,000 from his personal account into the CTA. On July 16, 2004, an additional $3,200 in cash and $4,500 in checks were deposited into the CTA. Respondent testified she was unaware that any of these deposits had been made into her CTA and she could only assume that her husband made them. On July 16, 2004, respondent gave Cash a check for $26,502.50 written from her CTA, together with a written recapitulation of all of the fees and costs incurred between October 11, 2000 and May 24, 2004, and copies of all invoices for services rendered during that period. She also agreed in writing to pay an additional $1,000 to Cash and to take all necessary steps to obtain entry of judgment in his marital dissolution case without further cost to him. At the time

---

was unreliable and lacked both credibility and candor. In contrast, the hearing judge found that respondent's testimony was credible. As we stated above, such credibility determinations are entitled to great weight. (*In re Gossage, supra,* 23 Cal.4th at p. 1096.) Since there is no competent evidence in the record to corroborate Cash's testimony, we adopt the hearing judge's factual finding that respondent was unaware of Cash's requests, if any, for his settlement funds. We deny the State Bar's request that we issue an order striking portions of the hearing judge's decision regarding Cash's credibility and candor.

respondent issued the check for $26,502.50 to Cash, there was only $19,787.08 in the CTA. Respondent deposited an additional $9,667 into her CTA on July 20, 2004, and the bank paid the full amount of the check to Cash when he negotiated it on the same date. Respondent testified that when she issued the check, she did not know there were insufficient funds in the CTA.

The State Bar filed and served a Notice of Disciplinary Charges (NDC) on November 17, 2006, alleging the following violations: 1) Failure to maintain client funds in a trust account (Rules Prof. Conduct, rule 4-100(A);[5] 2) Failure to render accounts of client funds (rule 4-100(B)(3)); 3) Commingling personal funds in the CTA (rule 4-100(A)); and 4) Moral turpitude (Business and Professions Code section 6106).[6]

After a three-day trial in the hearing department, the matter was submitted on June 26, 2007. In his decision, the hearing judge found respondent culpable of Count 1 by reason of her failure to maintain Cash's funds in her CTA (rule 4-100(A)) and of Count 4 moral turpitude arising from her gross negligence (§ 6106). He recommended that respondent be suspended for two years, stayed, and that she be placed on probation for two years with conditions, including 30 days' actual suspension.

The State Bar seeks review of this decision, contending that the hearing judge erred in failing to find culpability for commingling and for failure to render an accounting, and further arguing that the hearing judge improperly gave mitigation credit for respondent's good faith and lack of client harm. The State Bar also argues for the first time on appeal that respondent's testimony below, which it asserts involved the gratuitous disclosure of sensitive, personal information about Cash, constitutes uncharged misconduct in aggravation.[7] Finally, the State Bar contends that the discipline recommended by the hearing judge is inadequate.

---

[5]All further references to rule(s) shall be to the Rules of Professional Conduct, unless otherwise noted.

[6]All further references to section(s) shall be to the Business and Professions Code, unless otherwise noted.

[7]The State Bar did not object to respondent's testimony at trial and it did not raise the issue of uncharged misconduct at the conclusion of the trial or in the two post-trial briefs it submitted below. Thus, the hearing judge, who heard the allegedly problematical testimony and who observed respondent while on the witness stand, did not consider this issue. We find the

II. DISCUSSION

A. Count 1: Rule 4-100(A) (Failure to Maintain Client Funds in CTA)

We adopt the hearing judge's finding that respondent violated rule 4-100(A). At its essence, the rule requires that "[a]ll funds received or held for the benefit of clients by a member [of the State Bar] or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labeled 'Trust Account,' 'Client's Funds Account' or words of similar import . . . ." Rule 4-100 "is violated where the attorney commingles funds or fails to deposit or manage the funds in the manner designated by the rule, even if no person is injured. [Citations.]" (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 976.) The rule "leaves no room for inquiry into attorney intent. [Citation.]" (*Ibid.*) Accordingly, good faith is not a defense to a rule 4-100 violation. (*Ibid.*; *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9-10.)

On seven occasions between August, 2003 and July 12, 2004, the account balance dropped below the $24,854.50 that respondent was required to maintain in her CTA. This constitutes clear and convincing evidence that respondent violated rule 4-100(A).

B. Count 2: Rule 4-100(B)(3) (Failure to Render Accounts)

The hearing judge found respondent did not violate rule 4-100(B)(3). We agree. Rule 4-100(B)(3) provides that an attorney shall "render appropriate accounts to the client regarding" all funds of a client coming into the possession of the attorney or the attorney's law firm. The rule does not define "accounting" or the form or content of "appropriate accounts." While the definition of accounting may vary depending on the context in which it is used, the relevant definition for our analysis is provided by section 6091, which specifies that a statement of account for CTAs shall include "a complete statement of the funds received and disbursed and any charges upon the trust account . . . ."

On April 22, 2003, respondent notified Cash by letter that she anticipated receiving an equalization payment of $39,250, and she described in detail how she intended to disburse the

---

issue of uncharged misconduct was waived by the State Bar, and we decline to review it on appeal.

funds.[8] In that same letter, she asked for Cash's signature to confirm "our agreement regarding distribution of the funds." Cash signed the letter, stating he had read, understood and agreed to the proposed distribution. Then on June 18, 2003, respondent sent another letter to Cash advising that the $39,250 settlement check had been received, and the funds would be deposited in the CTA the following day. We find these letters are substantial evidence that respondent satisfied her accounting obligation when she received Cash's settlement funds.

The State Bar contends that *after* respondent deposited the funds into her CTA, she had an ongoing duty to render an account of the funds as they were withdrawn by her husband from the CTA. The State Bar points to the numerous invoices for services sent to Cash during this period, which were "silent about the repeated withdrawals from the CTA that directly impacted Cash's funds."[9] The State Bar argues that respondent's failure to account was the result of her "remaining blissfully ignorant of the status of [Cash's] actual funds." While there is no evidence that respondent's ignorance was "blissful," the fact remains that she *was* ignorant of the unauthorized withdrawals. On this basis, we find, *post,* that respondent is culpable of gross neglect constituting moral turpitude. But we do not find additional culpability for a violation of rule 4-100(B)(3) based on these same acts.

Moreover, we find respondent satisfied her obligation to account to Cash at the time she disbursed the $26,502.50 to him in July 2004 and sent him a statement, dated July 16, 2004, which set forth the total amount received in settlement, the deductions for payments of fees and costs and the balance due to Cash. It was accompanied by a 44-page recapitulation of all fees and costs incurred between October 11, 2000 and May 24, 2004, plus copies of all invoices for services rendered during that period. Rule 4-100(B)(3) does not specify when or how frequently

---

[8]Specifically, in her April 22, 2003 letter, respondent stated that she would endorse the check and deposit it into her CTA and then she would deduct her past due attorney's fees and costs in the amount of $5,395.50 plus an additional $4,000 for preparation for an upcoming hearing scheduled for May 2003. She further advised that if the case was not completed at the time the settlement check was received, she intended to deduct another $5,000 as an additional retainer, and the balance of $24,854.50 would be distributed to Cash.

[9]During the period of October 2000 through March 2004, respondent sent 42 invoices for services to Cash. There is no requirement that such invoices be sent on a monthly basis, as the State Bar suggests in its Opening Brief.

an attorney must render an account. (Cf. § 6091 [a statement of account for a CTA must be provided within ten days after a request by a client].) We therefore adopt the hearing judge's finding that respondent did not violate rule 4-100(B)(3), and we dismiss Count 2 with prejudice.

C. Count 3: Rule 4-100(A) (Commingling of Personal Funds in CTA)

Count 3 of the NDC alleges a second violation of rule 4-100(A) as a result of Mr. Sternberg's numerous withdrawals from and deposits to the CTA for office and personal use. The hearing judge concluded there was no culpability for this alleged violation of rule 4-100(A) because there was not clear and convincing evidence that respondent "allowed" her husband to take such actions.

We disagree. "'[T]rust account deficiencies are attributable to attorneys – not their employees.' [Citations.]" (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 795-796.) Respondent had a "personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds. [Citations.]" (*Id.* at p. 795.) This duty is non-delegable under rule 4-100(A). (*In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627, 635.) Had respondent taken the most basic precautions of reviewing her monthly account balance and CTA statements, she would have detected her husband's misappropriations, as well as other problems, which she now recognizes were foreseeable, such as "a bank error or an improper lien . . . identity theft, who knows what." Clearly, "[w]ith proper supervision of the operation of the account, petitioner would have been able to monitor both the source and the use of account funds, and been able to guard against misuse of those funds." (*Coppock v. State Bar* (1988) 44 Cal.3d 665, 680.)

Although we find that respondent is culpable under Count 3 for violating rule 4-100(A), we ascribe no additional weight to this violation because the same misconduct in Count 3 provides the basis for respondent's section 6106 violation as charged in Count 4, which supports identical or greater discipline. The appropriate level of discipline should not depend on how many rules of professional misconduct or statutes proscribe the same misconduct. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.)

D. Count 4: Section 6106 (Moral Turpitude)

The hearing judge correctly found that respondent was culpable of acts of moral turpitude as alleged in Count 4 because of her gross neglect of her CTA, which resulted in commingling and misappropriation by her husband. "While moral turpitude as included in section 6106 generally requires a certain level of intent, guilty knowledge, or willfulness [citation], the law is clear that where an attorney's fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support such a charge. [Citations.]" (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.) Respondent was grossly negligent in delegating to her husband and other staff the responsibility for the administration of many of the financial operations in her office, without putting into place the most elementary safeguards, such as review of account balances and monthly statements and implementation of basic procedures for the bank and her staff.

The State Bar asserts as an additional act constituting moral turpitude that respondent issued a check with insufficient funds to Cash at the time of the final disbursement to him in July 2004. In our view, the hearing judge correctly found that there was not clear and convincing evidence that respondent knowingly issued a check with insufficient funds or that she had reason to believe there were insufficient funds in her account. (Cf. *Bowles v. State Bar* (1989) 48 Cal.3d 100, 109 [issuing checks with knowledge they will not be honored constitutes moral turpitude]; *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 54 [same].) We also note the check was not for her personal expenses but was issued in favor of her client and was honored by the bank. The evidence therefore does not support a culpability finding of moral turpitude for the check issued to Cash with insufficient funds.

III. DISCIPLINE

A. Aggravation

The State Bar argues that respondent's persistent neglect of her CTA constitutes a pattern of misconduct. However, only the most serious instances of repeated, systemic misconduct over a prolonged period of time have been considered as evidence of a "pattern of misconduct." (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 959.) We therefore

agree with the hearing judge's characterization of the misconduct as involving multiple acts, owing to the repeated misuse of the CTA by Mr. Sternberg due to respondent's lack of supervision of the account. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii).)[10]

The State Bar seeks a finding of additional aggravation, arguing that respondent's failure to distribute $24,854.50 in settlement funds to Cash for 13 months caused him significant harm. (Std. 1.2(b)(iv).) While we might speculate that a delay of 13 months in receiving nearly $25,000 would cause harm to someone in Cash's position, the State Bar was obliged to establish such harm by clear and convincing evidence, which it failed to do.

B. Mitigation

The hearing judge correctly found a number of mitigating factors. Respondent's record of 18 years of unblemished practice is entitled to significant weight. (Std. 1.2(e)(i)). We also agree with the hearing judge that respondent displayed candor and cooperation with the State Bar. (Std. 1.2 (e)(v).) In this regard, we note that respondent has not disputed her responsibility for her misconduct, and she entered into a substantial stipulation of facts, much of which is material to our analysis.

The record also amply supports the hearing judge's mitigation finding because of respondent's considerable volunteer work, including her extensive activities with various local bar associations, teaching at the preschool of her synagogue for 12 years, pro bono tutoring of neighborhood children and her involvement with the American Youth Soccer League, Little League and Girl Scouts. (*In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 926.)

An extraordinary demonstration of respondent's good character was provided by many witnesses, all of whom knew respondent professionally. (Std. 1.2(e)(vi).) These were impressive witnesses, most of whom were attorneys, including opposing counsel. Their testimony was equally impressive. Typical of the testimony was that of Neal Tenen, who was a

---

[10]All further references to "standards" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

member of the Board of Delegates of the State Bar, a member of the Executive Committee of the San Fernando Valley Bar Association and chair of its family law section, a judge pro tem in small claims and traffic court, and a mediator for the Superior Court Family Law Division. Tenen had known respondent for over 15 years, both professionally and personally. He testified that respondent's ethical standards are of the highest caliber, and that he has referred cases to her, which she handled with honesty and competence.

Thirteen other attorneys, most of whom had known respondent for many years and also were very involved in the community and in bar association activities, testified in similarly glowing terms about respondent's high ethical standards, her dedication to her clients and to her practice, her high standing in the community and among family law practitioners. Several of the attorneys sat as judges pro tem and two are now superior court commissioners. Also testifying on respondent's behalf was Carl Bushnell, a court clerk for the Los Angeles Superior Court, who had known respondent since 1988 and observed how she handled her clients and their family law matters. He testified that respondent treated everyone with respect, and she was often called upon to sit as judge pro tem. Respondent also regularly volunteered to mediate cases for the court.

All of these witnesses were apprised of the charges against respondent, and yet all held her in extremely high regard. The hearing judge found that these witnesses provided "compelling" evidence of respondent's good character, and we agree.

We also adopt the hearing judge's finding that respondent has demonstrated remorse and recognition of her misconduct. (Std. 1.2(e)(vii).) As respondent testified, "Clearly, I understand now that I was foolish, and I'm mortified and beside myself that a very simple measure like actually getting – demanding the bank statement and looking at it would have resolved any chance of this happening." "I've been beating myself up over this issue." Upon recognizing her wrongdoing, respondent quickly took remedial action. She met with bank officials to implement new procedures to safeguard her account, and she changed her office procedures, instructing her staff to deliver the trust account statements to her directly. Most importantly, she now reviews every monthly statement.

We believe the hearing judge erred in finding that respondent was entitled to good faith mitigation under standard 1.2(e)(ii) because of her honest belief that her sole authority to sign the checks and her sole access to her checkbook constituted adequate supervision of her CTA. "In order to establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were both honestly held *and* reasonable. [Citation.]" (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653.) (Italics added.) To conclude otherwise would reward an attorney for his unreasonable beliefs and "for his ignorance of his ethical responsibilities." (*In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 427.) Respondent testified that she "had no idea [about] the activity that was taking place, the cash withdrawals or the money orders or the transfers was [sic] happening." Respondent's ignorance does not aid her in establishing good faith mitigation because her lax procedures were clearly unreasonable. (*Palomo v State Bar, supra*, 36 Cal.3d at p. 796, fn. 8.)

We find the hearing judge also erred in giving mitigation credit for the absence of client harm. (Std. 1.2(e)(iii).) Although we conclude above that the State Bar failed to prove significant client harm under standard 1.2(b)(iv), we similarly find that respondent did not establish by clear and convincing evidence that her negligence in forgetting to distribute the nearly $25,000 in settlement funds for 13 months did *not* cause Cash harm.

Notwithstanding the above modifications, ultimately we agree with the hearing judge that the record provides "persuasive and compelling evidence to mitigate the misconduct."

C. Analysis of Standards and Decisional Law

The primary purposes of these disciplinary proceedings are the protection of the public, the courts, and the legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession. (Std. 1.3.) In determining the appropriate discipline, we give the standards "great weight" (*In re Silverton* (2005) 36 Cal.4th 81, 89-92), but we nevertheless "temper the letter of the law with considerations peculiar to the offense and the offender. [Citations.]" (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) The applicable standards here are 2.2(a) and 2.3, which provide a range of discipline from one

year of actual suspension to disbarment.[11] However, the Supreme Court has "expressed dissatisfaction with standard 2.2(a) insofar as it precludes discipline less severe than a one-year actual suspension, going so far as to state that [standard 2.2(a)] "is 'not faithful to the teachings of this court's decisions.' [Citations.]." (*In re Brown* (1995) 12 Cal.4th 205, 221.) Given the extremely strong mitigation evidence in this case, standard 1.2(e) is particularly instructive because it provides that mitigating circumstances are those which demonstrate "that the public, courts and legal profession would be adequately protected by a more lenient degree of sanction than set forth in these standards for the particular act of professional misconduct found . . . ."

We do not believe that the one-year actual suspension prescribed by standard 2.2(a) is necessary to meet the disciplinary objectives stated in standard 1.3. Respondent's misconduct was serious, but it was directed towards a single client and did not involve deceit or knowledge of the misappropriations. Respondent immediately advised Cash when she received the settlement and deposited the funds into the CTA. She maintained regular communication with him in writing and by telephone during the course of her representation of him. Respondent has taken responsibility, repaid Cash, and is deeply remorseful for her misconduct. She initiated changes in her banking and office procedures. We are also impressed with the strength of her good character testimony, her participation in her local bar and her extensive community service. Finally, she has no record of discipline during her 18 years of practice.

Because of the wide range of discipline suggested by the standards, we look to the decisional law for additional guidance. We are mindful that misappropriation "covers a broad range of conduct varying significantly in the degree of culpability." (*Edwards v. State Bar, supra,* 52 Cal.3d at p. 38.) Thus, "[a]n attorney who deliberately takes a client's funds, intending to keep them permanently, and answers the client's inquiries with lies and evasions, is deserving

---

[11]Standard 2.2(a) provides that willful misappropriation "shall result in disbarment" unless the amount involved is insignificant or "the most compelling mitigating circumstances clearly predominate," in which case "the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances."

Standard 2.3 provides that an act of moral turpitude toward a client "shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law."

of more severe discipline than an attorney who has acted negligently, without intent to deprive and without acts of deception." (*Ibid.*) For this reason, it is difficult to discern a single continuum of discipline in prior cases involving gross mismanagement of client funds and/or trust account violations resulting in misappropriation and/or commingling. Nonetheless, in our view, the hearing judge's reliance on *In the Matter of Blum, supra,* 4 Cal. State Bar Ct. Rptr. 403 is apt because that case involved similar, although arguably more serious, misconduct. In the *Blum* case, the attorney was culpable of trust account violations, which resulted in an underpayment to her client of $5,618.25 for 13 months from the settlement of a medical malpractice lawsuit. The attorney also collected an illegal fee from the same client, which constituted a second act of moral turpitude. (*Id.* at p. 412.)

As in the instant case, the attorney in *Blum* relied on her husband to manage the day-to-day operation of the law office and to handle the CTA. He grossly mismanaged the financial aspects of the practice by making deposits to the incorrect account, improperly using funds from unrelated cases, disbursing funds from the wrong account, and maintaining the books in a "chaotic" manner. (*Id.* at p. 408.) The respondent argued in that case that it was reasonable for her to rely on her husband to manage the trust account because he was a partner in the law firm. (*Id.* at p. 407.) We rejected this assertion, finding the attorney was grossly negligent in failing to properly monitor the trust account, which was a non-delegable duty, and indeed her lack of oversight of the trust account constituted moral turpitude. (*Id.* at p. 411.) We made this finding based in no small measure on the absence of any evidence of standards or procedures for the operation of the trust account (*id.* at p. 409), and the attorney's admission that she heard about some of the client complaints but ignored them, instead allowing herself " 'to be disconnected from the management of the office for an extended period of time due to her tremendous work load . . . .' " (*Id.* at pp. 408-409.)

The *Blum* case also involved a second client matter where, on at least three occasions, the CTA fell well below the $44,531 in settlement proceeds that were due to the clients. In fact, the clients did not receive any of the settlement for six months because of insufficient funds in the CTA. (*Id.* at p. 410.)

Like the instant case, there was evidence of substantial mitigation, including 14 years of discipline-free practice, extreme emotional difficulties during the period in question as the result of her husband's abusive and dominating behavior, full acknowledgment of her misconduct by way of a stipulation of facts, and objective steps to atone for the consequences of her misconduct. (*Id.* at pp. 412-413.) The attorney presented six character witnesses. (*Id.* at p. 413.) The aggravating circumstances included multiple acts of misconduct and client harm. (*Id.* at p. 413.) We recommended two years' probation with 30 days' actual suspension.

In our *Blum* opinion, we cited three Supreme Court discipline cases, which we found to be factually similar and which supported our recommendation of 30 days' actual suspension: *Sternlieb v. State Bar* (1990) 52 Cal.3d 317; *Waysman v. State Bar* (1986) 41 Cal.3d 452; and *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465. These three decisions also guide our discipline recommendation here. In *Sternlieb v. State Bar, supra,* 52 Cal.3d 317, which was decided after the adoption of the standards, the attorney paid herself on numerous occasions during a six and one-half month period by withdrawing funds held in trust for her client and the client's husband, without any authorization to do so. (*Id.* at p. 325.) The attorney never advised her client that she had taken the fees from the trust account. (*Id.* at p. 326.) The court found the attorney misappropriated $4,066, and it further found that, although she did not act dishonestly in violation of section 6106, she did act unreasonably. (*Id.* at p. 321.) The attorney also was culpable of failing to render an account after the client had requested such an accounting on several occasions. (*Id.* at p. 328.)

In mitigation, the attorney had practiced law without discipline for 13 years and had no prior disciplinary record. (*Id.* at p. 322.) She also presented "numerous" character witnesses who attested to her excellent reputation as well as evidence that she had implemented new office procedures and was remorseful. (*Id.* at pp. 331-333.) The Supreme Court reduced our disciplinary recommendation of a two-year probation on the condition of actual suspension of 120 days, finding instead that a one-year probationary period with 30 days' actual suspension was adequate. (*Id.* at p. 333.)

Waysman v. State Bar, supra, 41 Cal.3d 452, which also was decided after the standards were adopted, involved less serious misconduct. In that case, the attorney had his secretary improperly place a $24,000 settlement check into his general operating account. (*Id.* at pp. 454-455.) This resulted in commingling and misappropriation of the funds by the secretary, who paid herself and her husband using pre-signed checks and then quit. The attorney took full responsibility and began making restitution approximately five months later. (*Id.* at p. 455.) The Supreme Court found this to be a single incident of negligence due to the attorney's "lax" financial procedures. (*Id.* at p. 458.) In mitigation, the court noted the attorney's 13 years of discipline-free practice, his immediate acknowledgement of wrongdoing and that he had serious alcohol problems for which he was attempting to rehabilitate himself. (*Id.* at p. 459.) Finding there was no intent to defraud, the Supreme Court ordered the attorney suspended from practice for six months, stayed, and that he be placed on one year's probation and until full restitution was paid. (*Ibid.*)

Giovanazzi v. State Bar, supra, 28 Cal.3d 465, which predates the adoption of the standards, involved more serious misconduct than the instant case, but nevertheless, it resulted in the Supreme Court ordering probation on the condition that the attorney be suspended for thirty days. The attorney was culpable of misappropriating $2,451.86 in funds deposited in a CTA and owed to an investigator. (*Id.* at p. 470.) The court found that the misappropriation, though not intentional, involved acts of moral turpitude because of the attorney's gross negligence in poorly managing his CTA and in careless supervision of his staff. (*Id.* at p. 475.) The attorney also improperly obtained and then defaulted on a $100,000 loan from a client without advising him to seek independent counsel, and was culpable of misleading a court with a false pleading. (*Id.* at p. 469.) In mitigation, the attorney had no prior record of discipline. (*Id.* at p. 468.) The court also gave "slight weight" in mitigation for restitution paid after notification of an investigation by the State Bar and because the attorney was inexperienced in business and real estate matters. (*Id.* at pp. 473-475.)

We find the cases relied upon by the State Bar in seeking a more severe discipline are inapposite. At oral argument, the State Bar argued that *Edwards v. State Bar, supra,* 52 Cal.3d

28, was perhaps most relevant to our discipline analysis. In *Edwards*, the Supreme Court imposed a one-year actual suspension for an attorney who was found culpable of willful misappropriation of $3,000 in settlement proceeds. In his testimony, Edwards acknowledged a practice of commingling his own funds in his CTA, using CTA funds for personal expenses, and using CTA funds to refund unearned fees to another client, all of which evidenced multiple acts of wrongdoing in aggravation. Like respondent, Edwards did not know the exact balance in his CTA or maintain records of the account. But, unlike respondent, Edwards intentionally commingled his personal funds in the CTA and drew on the trust account for his personal needs with knowledge that the funds were not his. (*Id.* at p. 33.) The two and one-half month delay in distribution of the funds harmed his client because it delayed her ability to start her own business. (*Id.* at p. 32.)

Edwards had less mitigative evidence than respondent. Edwards practiced without discipline by the State Bar (except for a suspension for non-payment of dues) for slightly less than 12 years, made full repayment within three months, was candid and cooperative throughout the proceedings and voluntarily took steps to improve management of entrusted funds. (*Id.* at p. 33.) But he did not present any good character testimony to demonstrate his misconduct was aberrational.

In its briefs, the State Bar relies on two additional cases: *In the Matter of Malek-Yonan, supra,* 4 Cal. State Bar Ct. Rptr. 627 and *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119. In both of these cases, the misconduct was far more egregious and the mitigation much less significant than in this case. *Malek-Yonan* involved the complete delegation of an attorney's financial responsibilities to two non-attorneys in a satellite office, which resulted in the theft of about $1.7 million dollars by those non-attorneys. Malek-Yonan had no controls in place and relied on her support staff to advise her of the balances in her operating account and CTA. She authorized them to write checks and sign them with a rubber stamp of her signature. She even asked them to pay her own salary. A basic background check of her staff would have disclosed that one of them had served two prison terms. In addition to this complete abdication of her responsibilities, Malek-Yonan threatened criminal action to gain

an advantage in a civil suit. Malek-Yonan's mitigation evidence was paltry in comparison to the instant case. We found that her six character witnesses did not satisfy the requisite extraordinary showing of good character. (*Id.* at p. 638.) Her pro bono work was also modest and was not given significant weight. (*Ibid.*) Perhaps the greatest distinction between that case and the instant matter lies in our concern that Malek-Yonan had no understanding of her trust account duties. "[W]e have little confidence that respondent knows and understands the importance of her strict adherence to her nondelegable trust account obligations, and knows and understands the many trust account related tasks . . . . Absent this understanding, there is a risk of future misconduct." (*Id.* at p. 640.)

We also do not find *In the Matter of Sampson, supra,* 3 Cal. State Bar Ct. Rptr. 119 is helpful. In addition to misappropriation and reckless disregard of his trust account obligations, the *Sampson* case involved a veritable grab bag of misconduct. Sampson failed to promptly pay over $22,000 in medical liens in 14 cases, repeatedly failed to provided competent legal services and did not promptly notify a client of the receipt of settlement funds. (*Id.* at p. 135.) Although Sampson had a record of 13 years of discipline-free practice (*id.* at p. 133), his other evidence in mitigation was weak, with only two character witnesses and a finding that the conduct was aberrational. (*Id.* at pp. 133-134.) Again, one of our principal concerns in *Sampson*, which is not present here, was the absence of evidence that "the problems resulting from respondent's disregard of his trust account obligations have completely ended or the respondent has established a sound office management plan." (*Id.* at p. 136.)

We have given consideration to the above cases, and we have taken a holistic view of the record in the instant case. In so doing, we find that the record, and most importantly, the very strong mitigation evidence, justify our departure from the minimum one-year of actual suspension suggested by the standards. (*In re Silverton, supra,* 36 Cal.4th at pp. 89-92.)

We believe the compelling evidence of respondent's good character and her prior 18 years of discipline-free practice demonstrate that her misconduct was aberrational. Moreover, respondent's recognition of her wrongdoing and her implementation of new office and financial safeguards are strong evidence that the misconduct is unlikely to recur.

Accordingly, we conclude that the 12-18 months suggested by the State Bar are too severe in light of the unique facts of this case, and instead we conclude that the discipline recommendations of the hearing judge, including 30 days' actual suspension, will adequately protect the public, courts, and legal profession.

IV. RECOMMENDATION

We hereby adopt the hearing department's recommendation that respondent be suspended for two years, stayed, and that she be placed on probation for two years with the conditions set forth in the hearing judge's decision filed November 26, 2007, as modified on November 28, 2007, including 30 days' actual suspension.

We further recommend that respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

EPSTEIN, J.

We concur:

REMKE, P. J.

STOVITZ, J.*

*Hon. Ronald W. Stovitz, Retired Presiding Judge of the State Bar Court, sitting by designation of the Presiding Judge.

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 17, 2008, I deposited a true copy of the following document(s):

OPINION ON REVIEW FILED OCTOBER 17, 2008

in a sealed envelope for collection and mailing on that date as follows:

[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ARTHUR L. MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

[X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

PAUL T, O'BRIEN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 17, 2008.

Rosalie Ruiz
Case Administrator
State Bar Court