

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 04-O-11939-RAH
CAROLINE SUE STERNBERG,)	DECISION
Member No. 122078,)	
<u>A Member of the State Bar.</u>)	

1. INTRODUCTION

In this disciplinary matter, Melanie J. Lawrence appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Caroline Sue Sternberg was represented by counsel, Arthur L. Margolis.

After considering the evidence and the law, the court recommends, among other things, that respondent be suspended for two years; that said suspension be stayed; and that she be placed on probation for two years with conditions, including 30 days' actual suspension, among other things.

2. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 20, 1985, and has been a member of the State Bar at all times since.

B. Background Facts.

Respondent, at all relevant times, practiced family law in the San Fernando Valley of Los Angeles, California. When she started practicing, she worked with two attorneys in a suite shared with other lawyers. Later, she was an associate in various other small firms. In February 1993, she opened up her own practice with just a single secretary.

Between 1999 and 2004, respondent's husband, Ken Sternberg, worked in her office as an office manager.¹ In that role, he was responsible for banking, including making deposits, paying bills, and reconciling bank accounts, including the client trust account held at Washington Mutual Bank (CTA). He was not a signatory on the CTA, nor was he authorized to withdraw funds from the CTA. Only respondent was authorized to sign checks or withdraw funds from the CTA. The checkbook for the CTA was kept in respondent's drawer in her desk, and no one else was allowed access to it.

The nature of respondent's practice was such that she wrote very few checks from the CTA. Because she was the only signatory on the CTA, and because only she had access to the checkbook, she did not believe that anyone else could negotiate checks or otherwise withdraw funds without her knowledge or consent. Further, because she was the only authorized signatory on the account and was the only one writing checks from the CTA checkbook which she kept in her office drawer, she believed she knew the state of the CTA. Therefore, she never reviewed monthly bank statements for this account, nor did she reconcile them and she only casually reconciled checks she wrote with the records that she kept for the CTA checkbook.² She trusted her husband to handle such matters for the firm. She did not imagine that the bank would allow someone other than the authorized signatory to remove funds from the account.

In October 2000, Rodney Cash (Cash) employed respondent to represent him in a pending marital dissolution matter entitled *Geneva Lee Cash v. Rodney Eugene Cash*, Los Angeles Superior Court case no. PD026453 (the Cash matter). On October 11, 2000, Cash received a retainer agreement executed by respondent that acknowledged the receipt of a \$2500 retainer paid by cash. This agreement also provided for a minimum "retainer credit" of \$1000 to be maintained "so long as there [was] a court hearing scheduled...". Respondent sent Cash

¹Ken was not a licensed attorney. He suffered from cancer in recent years and, after the trial in this action, he passed away.

²Respondent credibly testified that she felt that reconciling the CTA meant making sure that there was money in the account and that it was disbursed properly. She did not think it meant relating the bank statement with the checkbook.

regular invoices between October 11, 2000 and April 29, 2004.³ Cash paid a total of \$22,221.25 in fees and costs.

The family law matter for which respondent was retained settled in March 2003, and the court ordered that Cash's then-wife (petitioner) pay to him \$39,250 as an equalization payment in the community property estate. On April 22, 2003, respondent wrote to Cash and informed him that the petitioner would make such a payment payable to both Cash and respondent. In addition, respondent's letter listed the four steps that respondent intended to take regarding distribution of the \$39,250 payment:

1) respondent's office would endorse the check with Cash's and respondent's names and deposit the funds into respondent's client trust account;

2) respondent would deduct first her past due attorney's fees and costs, which she stated were \$5395.50 for work performed between January and March 2003; and respondent would also deduct additional future fees of \$4000 for preparation and representation of Cash at a hearing scheduled for May 2003;

3) if the case was not completed when respondent received the \$39,250, Cash's retainer would be replenished by an additional deduction of \$5,000; and

4) the balance would then be distributed to Cash.

Cash signed respondent's letter, agreeing to the above distribution arrangement. As a result, in the end, Cash was to receive \$24,854.50.

On June 18, 2003, respondent sent Cash a notice that she had received the \$39,250 check. On June 19, 2003, respondent deposited this check in her CTA.

From June 19, 2003 through July 17, 2004, Washington Mutual allowed Ken to withdraw, without respondent's knowledge or consent, portions of these funds from the CTA

³After a brief gap in time, respondent also sent an invoice on August 4, 2004. Cash disputes that some of these invoices were sent to him. However, the court finds that Cash lacks credibility on this issue. Specifically, based on his demeanor at trial and his inability to accurately recall events, the court finds that his testimony that he did not timely and periodically receive billing statements or otherwise have any contact with respondent after June 2003 cannot be believed.

even though he was not a signatory on that account. He did so in the form of cash, bank checks, money orders, and by telephone transfers directly into his personal account, also at Washington Mutual. He obtained money orders 16 times, cash 11 times, bank checks 10 times, and telephone transfers to Ken's account 38 times. These funds were used to pay office expenses and his and respondent's personal expenses. Between August 29, 2003 and July 12, 2004, the balance in the CTA dipped below the required \$24,854.50 seven times.⁴

Cash claims (as set forth in Exhibit 6) that he made 30 to 40 calls to respondent during the period she held his funds. The court finds that respondent credibly testified that she did not receive the January 27, 2004 letter purporting to demand an accounting. (Exhibit 6.) The letter was not personally faxed by Cash, but rather Cash purportedly asked another person in the office where his wife worked to fax it for him. As noted above, the court has found that respondent has credibly testified that she did not receive this letter. Indeed, as is more specifically discussed below, it appears that the letter was a fraud, created to somehow bolster his claim against respondent.

Cash claims that he complained to respondent about her failure to disburse the funds. He also contends he complained about her failure to stay in touch with him during the period of time she held the funds. However, during that period (June 2003 through July 2004), she actually maintained close communications with him. She had a long-term professional relationship with Cash, and also, because of their friendly personal relationship, she knew much about his personal and family problems, including some matters that would be considered extremely private. They often were in contact, and the payment of the amount she held did not come up in their conversations and correspondence. Her invoices (which the court finds were sent in the ordinary course of business on or about the dates of each such invoice) reflect this close communication. (Exhibit A, pages 64 - 80.) In addition, the other documents in evidence from this period (Exhibits C through N) all reflect frequent discussions about the case. Copies of all letters to or

⁴On July 15, 2004, Ken transferred \$3000 from his personal account into the CTA, and on July 16, 2004, Ken deposited cash and checks totaling \$7700 into the CTA. Respondent did not know of or authorize any of these transactions.

from opposing counsel and other interested parties were sent to Cash. (Exhibits O, P, Q, R, S, and T.) None of the documents from Cash reflects concerns about the accounting or a failure of respondent to communicate with Cash.⁵ None suggests an inability to reach respondent.⁶ To the contrary, they reflect a normal, business-like discourse between attorney and client regarding a pending case. Significantly, several of the conversations reflected in the notes in these exhibits, occurred after the angry letters of January and March but before payment of the check in July. What happened? Cash had still not received his money. The court finds that “what happened” was regular correspondence and contact between respondent and Cash. What “did *not* happen” were the January 27, 2004 and the March 23, 2004 letters.⁷ Weighing all the evidence, the court concludes that they are fraudulent. The finding of this substantial misrepresentation on the part of Cash calls into question all of his other assertions. Put in plain words, he lacked candor and cannot be believed.

On June 22, 2004, the State Bar sent respondent a letter inquiring about Cash’s complaint. On July 16, 2004, respondent gave Cash check number 5021, written from respondent’s CTA, in the amount of \$26,502.50, along with an accounting of work performed between October 11, 2000 and May 24, 2004. Respondent agreed in writing to reimburse Cash an additional \$1000 and to take the necessary steps to finalize the matter without additional costs to him.

⁵The court finds that Cash never demanded an accounting from respondent.

⁶Exhibit C, while undated, refers to a topic that occurred in April 2004. Assuming Exhibit C was handwritten by Cash in April 2004, (just 30 - 60 days after the scathing letter of January 27, 2004, exhibit 6, and just a few days after the March 23, 2004 letter, exhibit 7), Cash is polite and shows a remarkable “calm”, providing respondent with suggestions for the changes in the draft custody order. Using terms such as “Please excuse the informality...” is far different from “I am disappointed in the way you are treating me...”, accusations of unethical conduct, and other angry statements in the January 27 and March 23 letters. Similarly, Vilma Sanchez credibly testified that in her role as a billing clerk and part-time secretary, she never received any calls from Cash complaining about the bill. Further, she testified that such calls would be documented in their file, and no such notes existed.

⁷Vilma Sanchez noted that neither exhibit 6 nor 7 was in the file. Cash testified that exhibit 7 was returned as “not accepted.”

At the time respondent issued CTA check number 5021 to Cash in the amount of \$26,502.50, the balance in the CTA was \$19,787.08. As such, respondent had insufficient funds in her account to cover the check to Cash. When she issued the check, respondent did not know there were insufficient funds to cover the check. In fact, she suggested that Cash immediately go across the street to her bank to cash the check. Despite the insufficient funds, the bank paid on the check, and Cash received the full amount of funds due him.⁸

C. Legal Conclusions.

1. Counts One and Three - Rule 4-100(A) (Maintaining Client Funds in Trust Account)

Rule 4-100(A) requires, in relevant part, that an attorney place all funds held for the benefit of clients, including advances for costs and expenses, in a client trust account.

There is clear and convincing evidence that respondent wilfully violated rule 4-100(A) as alleged in Count One by not maintaining \$24,854.50 of Cash's funds in the trust account. The balance in respondent's CTA fell below \$24,854.50 seven times between August 29, 2003, and July 12, 2004.

Count Three charges respondent with a violation of rule 4-100(A) because she purportedly allowed her husband, Ken, to withdraw funds from the CTA for office and personal expenses and to deposit personal funds in the CTA. The court does not find clear and convincing evidence that respondent allowed her husband to take such action.⁹ He did so unbeknownst to her and in cooperation with the bank in which the CTA was established. He was not authorized to withdraw funds from the CTA nor was he a signatory on the CTA yet the bank allowed him to transfer funds, even by telephone, and obtain cash from the CTA. He did not have access to the CTA checkbook. Only respondent was a signatory on the account and had access to the CTA checkbook.

⁸Other checks totaling \$9667 were deposited into respondent CTA on July 20, 2004.

⁹The parties agreed that Ken was not permitted to withdraw funds from the CTA, only to make deposits. (Stipulation at paragraph 20.)

It is also alleged in Count Three that respondent deposited or commingled her funds in the CTA. Ken did deposit personal funds in the CTA. However, restoration of funds wrongfully withdrawn from a trust account is not a further violation of the Rules of Professional Conduct as a prohibited “commingling” of attorney and client funds. (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 978 - 979.) Further, just as respondent did not know of the withdrawals, she was also unaware of these deposits when they were made.

2. Count Two - Rule 4-100(B)(3) (Accounting)

Rule 4-100(B)(3) requires, in relevant part, that an attorney maintain complete records of all client funds, securities or other property coming into the attorney's or law firm's possession and render appropriate accounts to the clients regarding them. The attorney is to preserve such records for no less than five years after final appropriate distribution of the funds or property.

There is not clear and convincing evidence that respondent wilfully violated rule 4-100(B)(3). Although not required to trigger the obligation to account, no demand for an accounting was made. (See *In the Matter of Brockway* (Rev. Dept. 2006) 4 Cal.State Bar Ct. Rptr. 944, 952. But see, in relevant part, Business and Professions Code section 6091 [client’s written request required to obtain a complete statement of the funds received and disbursed and any charges upon the trust account within 10 calendar days of the request.]) As noted by the State Bar, the Professional Responsibility Practice Guide offers some guidance as to events that trigger an attorney’s obligation to render an accounting when one has not been requested. Accountings should be made before withdrawing fees for legal services from the CTA; when distributing funds to the client, in explanation of the distribution; and at the time of any other distribution from the account. (Vapnek, Tuft, Peck and Wiener, Cal. Practice Guide: Professional Responsibility (The Rutter Group, 2006) ¶ 9:266.3, p. 9-39.) In the instant case, an appropriate accounting as required by rule 4-100(B)(3) was rendered when the funds were distributed to Cash. Respondent could not have known of her obligation to render other accountings for the amounts Ken withdrew without authorization from the CTA, because she did not know about the

thefts.¹⁰

3. Count Four - Section 6106 (Moral Turpitude)

Section 6106 of the Business and Professions Code¹¹ makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his or her relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is not clear and convincing evidence to support some of the allegations supporting this charge. As previously noted and as the parties stipulated, respondent did not give Ken access to withdraw funds from the CTA. The evidence does not support a finding that respondent knowingly issued Cash a CTA check with insufficient funds. In fact, she encouraged Cash to negotiate the check right away, an act inconsistent with the actions of someone who knew there were insufficient funds in an account. As noted above, replenishing misappropriated funds to the CTA does not constitute commingling. (*Guzzetta v. State Bar, supra*, 43 Cal.3d at pp. 978 - 979.)

However, there is clear and convincing evidence that respondent violated section 6106. Unbeknownst to respondent, Ken, in cooperation with the bank, took the actions that resulted in the negligent misappropriation of some of Cash's funds over a period of 13 months. She never reviewed or reconciled the monthly bank statements for this account, trusting her husband to handle such matters, and never imagining that the bank would allow someone other than her, the authorized signatory, to withdraw funds from the trust account. Regardless, respondent had a

¹⁰The State Bar notes that in *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 311, the attorney was found culpable of violating rule 4-100(B)(3) because he did not provide his clients with an accounting of the disbursements from the CTA, including for his fees, while not maintaining an adequate balance in his CTA. (State Bar's brief filed May 29, 2007, 4:19 -24.) *Heiner* is distinguishable, because in the instant case, the funds were stolen from respondent's CTA; there were no "disbursements" to clients or for fees as there were in *Heiner*. As to the withdrawal of her fees from Cash's funds, when she advised him that the equalization payment was forthcoming and the amount, she also advised him of how and when she was going to withdraw her fees and the amount. She accounted for her fees taken from the entrusted funds when she paid Cash the balance of the funds.

¹¹Future references to section are to this source.

personal, nondelegable duty to safeguard her clients' funds. (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 795; *Coppock v. State Bar* (1988) 44 Cal.3d 665, 680.) Had she reviewed and reconciled her CTA statements, she would have discovered Ken's and the bank's wrongdoing and could have prevented some of the misappropriations. She did not intend to do anything wrong but her gross negligence in handling her trust account during this time leads to a finding of culpability for violating section 6106. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 475; *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.)

3. LEVEL OF DISCIPLINE

A. Factors in Aggravation

Respondent's multiple acts of misconduct are an aggravating factor. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct¹², std. 1.2(b)(ii).)

B. Factors in Mitigation

Respondent has no prior record of discipline since her admission in 1985. This is a significant mitigating factor. (Std. 1.2(e)(i).)

Standard 1.2(e)(ii) allows mitigation where the member acted in good faith. In this case, respondent honestly felt that the bank could not negotiate checks or process transfers from her trust account without her signature. It is clear from the evidence that respondent never knew of the improper transfers or withdrawals made by her husband in his role as office manager of the law firm. Further, respondent paid Cash an additional \$1000 when she disbursed the CTA funds to him and agreed to take the necessary steps to finalize his case without additional cost to him. As such, respondent's good faith is a mitigating factor.

The standards provide for mitigation where there was a lack of harm to the client or the person who is the object of the misconduct. (Std. 1.2(e)(iii).) In this matter, the bank paid the trust account check to respondent's client even though there were insufficient funds in the trust account. As such, the client did not suffer harm.

Respondent exhibited spontaneous candor and cooperation to the State Bar during the

¹²Future references to standard or std. are to this source.

disciplinary investigation and proceedings. (Std. 1.2(e)(v).) When she learned of her husband's actions, she never disputed her responsibility for the misconduct. She and her counsel fully cooperated with the Bar in executing a stipulation as to facts concerning all of the substantive allegations in the NDC. The Office of the Chief Trial Counsel has acknowledged her cooperation during the proceedings and has stipulated to "some" mitigating impact of that cooperation. On the contrary, the court finds that this candor and cooperation is entitled to significant mitigation credit.

Respondent's extensive, substantial volunteer work is a mitigating factor. (*In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 926.) She is active in many bar activities. She is a member of the Los Angeles County Bar Association and the San Fernando Valley Bar Association. She has been a member of the executive committee of the San Fernando Valley Bar Association for approximately eight years. She has been a mediator in the San Fernando Valley and Van Nuys courts and a judge pro tem until the presiding judge changed the family law rules to eliminate the use of judge pro tems who also practice before that court. Respondent does volunteer work for her temple, Valley Beth Shalom. She has taught preschool at the temple for 12 years. When her children were in middle school and high school in Calabasas, she was involved in the basketball program and the Mid-Valley Little League. While working with the little league, she established the snack bar as a fund raiser for the league. She has also been involved with AYSO soccer. She volunteered for the Girl Scouts, an organization in which her children were involved. However, her volunteer activities were not limited to her own children. She did pro bono tutoring for neighborhood children, helping them to excel in school. She has employed her husband in her business but, after her husband became very ill, and she was the sole support for the family.

Mitigation credit may be also given where a respondent promptly takes objective steps to spontaneously demonstrate remorse, recognize the wrongdoing or timely atone for any consequences of the misconduct. (Std. 1.2(e)(vii).) In this matter, respondent immediately sought to correct the problems associated with the trust account, both with the client and with the bank. She noted that she was horrified when she learned of the withdrawals by her husband

without her authorization and she immediately changed her office procedures and met with the bank to prevent such actions from occurring in the future. She no longer maintains a trust account.

Respondent is entitled to mitigation credit when she is able to present an extraordinary demonstration of her good character, attested to by a wide range of references in the legal and general communities who are aware of the full extent of the members misconduct. (Std. 1.2(e)(vi).) Respondent presented her own testimony, as well as the very persuasive and credible testimony of several witnesses, most of whom were lawyers, including opposing counsel, and all of whom spoke very highly of her and her ethical standards.

The witnesses that testified in support of respondent included the following individuals:

Neal C. Tenen has been an attorney since June 1978. He has been a member of the Board of Delegates of the State Bar and a Trustee of the San Fernando Valley Bar Association. He was a judge pro tem, handling small claims, small claims appeals and traffic matters. He is a mediator in the Superior Court Family Law Department and has chaired the family law section of the San Fernando Bar Association. He is the past president of the Children's Orthopedic Foundation. He has known respondent for 15 years both professionally and personally. He has sat with respondent on various committees in the San Fernando Valley Bar and has two cases with her. They are both presently on the Executive Committee of the San Fernando Valley Bar Association. It is his opinion that her ethical standards are beyond reproach. He has referred cases to her and always found her to be truthful in their interactions. He feels she is not a person who attempts to unreasonably build up her fees, but rather efficiently handles her cases. She also handles clients very well. His review of the charges in the NDC, both pretrial statements, and the stipulation entered into by the parties does not change his opinions about her.

Judith Rhodes has been an attorney since December 7, 1988. Before her admission to practice law, she was a teacher, a paralegal, a legal secretary, and a waitress. Her teaching experience is in special education, teaching the developmentally disabled. She went to law school between 1982 and 1986 and has practiced only family law since her admission in 1988. She is in private practice and is a certified family law specialist. She is active in the Ventura Bar

Association and represents minors on a pro bono basis. She has been a pro tem judge in family law. She has known respondent for approximately 10 to 12 years, when they have worked together on cases and opposed each other on other cases. On occasion, she has referred clients to respondent. Ms. Rhodes feels that respondent is honest and that she can always rely on her. She trusts her word, not needing to confirm matters in writing. Respondent has never misrepresented anything to her or in a pleading in court. She is aware of respondent's billing practices and feels that she never "pumps up" fees. Ms. Rhodes appeared familiar with the charges and misconduct stipulated to. None of these facts changed her view.

Howard Gottlieb has been an attorney since December 1976. Prior to his admission he was in the army and served in Vietnam. In that regard, he was attached to the South Vietnamese army as an advisor and enjoyed a top secret security clearance. He was wounded in the war. He has worked for the Department of Corporations as a deputy commissioner. He has 9 children, both his own and through marriage. He currently has a family law and criminal practice and is very active in the community. He is a member of the Monterey Bay Veteran's Association as well as other veteran associations. He is a mediator in the San Fernando and Van Nuys courts. He acts as minor's counsel without pay. He met respondent 20 years ago and on several occasions has been her advisor. He has come to respect her in the many cases they have had together. He knows her through the pro tem mediator program, as well as a study program among attorneys that met once per month. He feels that respondent goes beyond being honest. When fees are at stake in cases, he is able to view her billing practices. He feels she does not overcharge, and in fact, undercharges for what she does. She is very honest with her time. He feels she represents her clients vigorously, but not to the extent of putting forth unsupported positions. Her reputation in the family law legal community, according to Mr. Gottlieb, is as an attorney that is very well respected. He notes that he would select her as a judge pro tem for his own case, and it is typically his practice to never allow a pro tem judge to handle his cases. He would trust her to hold his money. Mr. Gottlieb reviewed all of the documents describing the charges and the stipulated facts and none of these documents changed his view of respondent.

Ann Marie DeSimone is an associate in respondent's law office. She was admitted to

practice in June 2005. Prior to working for respondent she was a volunteer at a pro per family law clinic. She works with respondent every day and on weekends. Respondent trained her since her first day as a lawyer. Now she feels that she is an experienced family law attorney as a result of that training. She knows how to conduct herself in court and in the office and she has frequently discussed ethical issues with respondent. Respondent has always impressed upon Ms. DeSimone the importance of being honest and of never getting close “to the ethical line.” Ms. DeSimone acknowledged that she was respondent’s employee, but emphasized that she would not support her in this matter if what she testified to was not the truth.

Barbara Azimov has been an attorney since 1992. Prior to becoming a lawyer she went to school to become a teacher. She taught school and got a master’s degree in special education. She moved to California in 1981 and went to law school in 1988. Initially she started her practice by defending attorneys before the State Bar of California. She then went into family law and started practicing in that area in 1994. She is active in the San Fernando Valley Bar Association and is chair of the executive committee. She has sat as a judge pro tem in the family law department and was executive chair of the family law committee of the San Fernando Valley Bar Association. She has known respondent for over 12 years. She feels that respondent is honest and a person she can trust. She refers to her as a woman of her word, a person you can always trust to be “up front and above board.” She feels that unfortunately, many attorneys have a “scorched earth” attitude about family law, but respondent does not. She says respondent’s goal is to resolve issues not “churn” fees. She can always trust respondent to be forthcoming and to take the high road. She feels that respondent has good moral character. Ms. Azimov read all of the documents referred to above and none of these documents changed her view.

Baden Mansfield was admitted in 1979 to the State Bar of California. He is a family law attorney in Manhattan Beach, California. He has been a sole practitioner for 20 years but was in a large national firm. He is a member of the Los Angeles County Bar Association, family law section as well as the South Bay Bar family law section. He is a volunteer for the Good Shepard Shelter, a woman’s shelter where he provides services involving restraining orders. He has known respondent for between 15 and 18 years. He was on the same side with respondent in a

hotly-contested joinder action. During this period, he and respondent conducted two bifurcated trials and spent a lot of time together. His opinion is that respondent has the highest moral integrity. In addition, it has been proven to him that she has the highest legal competence. In fact, he can not say anything negative about her ethical standards or her other qualities. He would hire her for himself and his family. He feels that had respondent known about the actions of her husband, she would never have allowed it. He is confident that she would never allow this to happen again. Mr. Mansfield read all of the above documents and nothing in those documents changed his opinion.

Patrick DeCarolis has been an attorney since 1978. He has worked for a family law specialist and then worked for the law offices of Paul Caruso. Between 1982 and 1997, he was on his own with an associate or law clerk. He is a certified specialist in family law. Later he joined Trope & Trope and then later started the law firm of Trope & DeCarolis. He does exclusively family law matters. He is a member of the Los Angeles County Bar Association family law section, the American Academy of Matrimonial Lawyers, and the National Academy of Matrimonial Lawyers. He is on the board of directors of the Harriet Buhai Center, and has been for over five years. He has known respondent for over 10 years but maybe as long as 20 years. Their relationship is only a professional relationship and during the last five to six years, he has worked with her on an ongoing case. He has opposed her on more than two other cases. He feels that respondent has the highest moral character. He has never questioned respondent's integrity. She always tells the truth and will stand by her word. He never needs to confirm anything in writing. He considers her in the highest category of family law attorneys. Like the others Mr. Carolis read all of the documents including the pretrial statements, stipulation of facts and NDC. Nothing in those documents changes his view about respondent.

Robert Holmes has been an attorney since 1975. During his first five years, he was a criminal defense lawyer. Now, he only does family law. In 1985, he became a certified specialist in family law. He teaches and acts as an arbitrator for the Los Angeles County Bar Association Attorney-Client Relations Committee. He has appeared as an expert witness in family law matters involving legal malpractice. Between 1983 and 1984, he was the president of

the Glendale Bar Association, and between 1983 and 2003, he was an elected member of the school board in Glendale. He served 20 years on the Selective Service Board. He has taught for the last 10 years at the Bridging the Gap program for new lawyers recently admitted. Los Angeles Magazine has voted Mr. Holmes a “Super Lawyer” in 2005, 2006, and 2007. He is AV-rated by Martindale Hubbell. He has known respondent since her admission. He has opposed her in various cases and even offered her a job (which she declined). He feels she is sharp, articulate and able to handle herself in the courtroom. He has had 15 to 20 cases against her and the last case was a hotly-contested custody case. In his opinion she has an excellent reputation and never misrepresents facts. He feels that she has common sense and always tries to figure out what is right. He feels that she never “churns” her fees and he feels comfortable referring her clients. Like the others, Mr. Holmes had read all of the documents referred to above. None of these documents changed his opinion.

Robert Gantman has been an attorney since 1995. His practice has been in family law for the last 12 years. He is a sole practitioner. He acts as a mediator in the Los Angeles Superior Court and is a member of the executive committee of the family law section of the San Fernando Valley Bar Association. He has known respondent for five years and has had one case against her. Now their relationship is more personal and they talk to each other approximately once per month. He feels that she is honest, ethical and he feels very comfortable referring her clients. Like the others he has read all of the documents referred to above and nothing changed his view of respondent.

Susan Wise has been a Los Angeles Superior Court commissioner since 2005. She was admitted to the practice of law in 1973. Thereafter, she was employed by San Fernando Valley Neighborhood Legal Services and went into private practice from 1975 to 2005. She closed her practice and became a commissioner. During her entire career she has practiced almost exclusively in family law. She is a member of the Los Angeles County Bar Association and the San Fernando Valley Bar Association. She started a “drop-in” law center at the women’s resource center at California State University, Northridge. She has lectured at California State University at Northridge on children’s law and also lectured on constitutional issues and

domestic violence. She frequently speaks at outreach programs. She has known respondent professionally since 2003, but they are not social friends. Respondent has appeared before her on a significant number of cases. Often, these are high-conflict cases but, Commissioner Wise notes, that respondent has always remained calm and does not get entangled in her clients' emotions. She feels she always takes reasonable positions and that she does the "social work" necessary for a good family law practice. Often times, respondent is able to "get the parties together." She has never found respondent to be dishonest and would assume that whatever she says is true. She did not have an opportunity to read the stipulation, however, she did read the pretrial statements and nothing in those documents changed her view as to respondent's character.

Carl Bushnell is the court clerk for Department L in the North Valley District of the Los Angeles County Superior Court, located in the San Fernando Valley. He has been a clerk since 1988 and has known respondent since that time. He has a professional relationship with respondent and regards her very highly. He is able to observe how she deals with her clients. It is his opinion that she treats everyone with respect. He often has called respondent in to act as a pro tem judge if a commissioner was sick. When he has done so, he has received very few "non-stips" (that is, very few litigants challenged her as a judge pro tem.) Respondent also would help, on a pro bono basis, with mediating cases for the court. Often times, respondent would agree to assist the court and the parties by running the Disso Master program in an effort to help resolve cases. Mr. Bushnell has read all of the documents referred to above and nothing in those documents changed his view of respondent.

Alan Freidenthal is a commissioner in Department L in the San Fernando court. Commissioner Freidenthal was admitted to practice in 1985. After clerking for various courts, including the Ninth Circuit in Reno, Nevada, he went to work in Los Angeles for the Los Angeles office of a New York law firm. Later, in 1990 - 1991, he worked for the Securities Exchange Commission. He was also an in-house attorney for the Chubb Group doing director's and officer's liability work. He became a referee for the Los Angeles County Superior Court, and then a commissioner in 2005. Prior to that he was involved in the State Bar and was

appointed a receiver in the State Bar Court. He was on the board of the California Young Lawyers Association and was elected its president in 1991 - 1992. In that capacity, he was the Young Lawyers representative to the Board of Governors. Respondent has made approximately 12 - 20 appearances before Commissioner Freidenthal. He feels she has superlative moral character. She is highly competent and she conducts herself very well. According to Commissioner Freidenthal, she doesn't overreach and she is fair and even-handed in her dealings with her opposing counsel. She has always been truthful in her declarations and when she appears in his court. He feels that she zealously advocates her client's position but always is highly ethical. He noted that whenever her name comes up it is always in a positive light. He has reviewed all of the documents as the others have, and he feels that none of those documents changes his opinion.

Lynn Mann has been an attorney since June 1989. She was in private practice until 2002. Thereafter she taught family law at a law school in Ventura. She has been practicing family law ever since. She has known respondent for three years, and now works for her. She feels that respondent is a very honest professional attorney. She trusts what respondent says and would not work for her if she felt she was dishonest. She has read all of the documents and none of those documents affects her opinion of respondent.

Larry Epstein has been an attorney since December 1975. He is a sole practitioner doing exclusively family law. While initially with a firm, he has been on his own for 22 years. He has served the San Fernando Valley Bar Association as its chair of the family law section. Up until last year he was on the executive committee. He has also been a judge pro tem for Small Claims Appeals and Family Law. He was a hearing officer for the State Bar of California in disciplinary proceedings before the advent of the professional court. He has been a mediator for the Los Angeles County Superior Court, a member of the Lions Club and has participated in California Special Olympics. He feels that respondent has good moral character and is honest. He feels that she stands by what she says and that she is not an attorney that "runs up fees." She has an excellent reputation. Mr. Epstein has reviewed all of the documents and nothing in those documents changes his view of respondent.

Jeannie Schwab has been an attorney since April 1993. She has her own family practice in Encino. She is a member of the San Fernando Valley Bar Association and is a mediator in the Van Nuys and San Fernando courts. She serves as minor's counsel. She has known respondent since 1997 and has had approximately 10 cases opposite her. They have a close relationship despite the fact that their cases have always been contentious. In her opinion, respondent is an excellent attorney representing an exemplary standard of ethics. She is aware that the bench officers before whom respondent appears also know this. Ms. Schwab could not think of one bad thing to say about respondent and notes that everyone thinks highly of her.

The witnesses that testified on behalf of respondent presented compelling mitigation evidence in support of her position in this matter.

4. **DISCUSSION**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.2(a) and (b) and 2.3 apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for wilful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or unless the most compelling mitigating circumstances clearly predominate, in which case the minimum discipline recommended is one year actual suspension. The one-year "minimum discipline" set forth in the standard "is not faithful to the teachings of [the Supreme] court's decisions" and "should be regarded as a guideline, not an inflexible mandate." (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.)

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable, in one client matter, of violating rule 4-100(A) and section 6106 for the negligent misappropriation of a client’s funds. Multiple acts of misconduct was the sole aggravating factor. Respondent presented most compelling and substantial mitigating factors, including no prior discipline in about 18 years of practice; good faith; good character; remorse and remedial action; candor and cooperation; and pro bono work, sufficient to support a deviation from the guideline of standard 2.2(a).

The State Bar recommends, among other things, 18 months’ actual suspension. Respondent seeks no actual suspension or, at most, 30 days’ actual suspension. Having considered the parties’ contentions, the court believes that, under these circumstances, 30 days’ actual suspension is sufficient to protect the public from further misconduct from respondent.

The State Bar’s reliance on *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627 is misplaced. That case presents greater misconduct and lesser mitigation than the present case. Most importantly, and contrary to the present case, Malek-Yonan completely turned over control of her CTA to her bookkeeper. For example, she did not even sign CTA checks but authorized the bookkeeper to use a rubber stamp with her signature. It appears that the CTA was regularly used in her practice. Her misconduct resulted in the misappropriation of \$1.7 million.

The court found instructive *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403. In *Blum*, the attorney was suspended for three years, stayed, with two years’ probation and 30 days’ actual suspension. She and her then-husband, also an attorney, were law partners. Both were signatories on the client trust account. Blum was immersed in landmark fertility litigation and so her husband managed the office and the trust account. He grossly

mismanaged the office's finances, which resulted in the misappropriation of client funds in two matters. Blum was found culpable of two instances of misappropriation based on moral turpitude due to her gross negligence in managing entrusted funds¹³ as well as charging an illegal fee. In mitigation, she had no disciplinary record in 14 years of practice, suffered from extreme emotional difficulties for which she had been and continued to be treated, was remorseful, candid and cooperative, took remedial steps to take full charge of all aspects of her practice including the handling of the finances and her trust account, disassociated herself personally and professionally from her husband, engaged in pro bono activities and established her good character. In aggravation, Blum engaged in multiple acts of misconduct and significantly harmed her clients. The court found that the misconduct of which Blum had been found culpable was unlikely to reoccur. There are many similarities between the present case and *Blum*.

Respondent herein engaged in the negligent misappropriation of entrusted funds in one client matter, unaccompanied by acts of deceit or other aggravating factors. She has presented persuasive and compelling evidence to mitigate the misconduct. She is a long-time practitioner who is well-respected in the legal community in which she practices, such that even opposing counsel in hotly-contested matters and two commissioners before whom she has appeared regularly testified in support of her good character. The conduct in this case was aberrational and is very unlikely to reoccur. Respondent did not generally use a trust account in her practice. She was its only signatory. No one, not even her husband and office manager, Ken, was allowed to withdraw funds from it. She trusted that her husband would honestly and correctly administer her trust account. She never imagined that the bank would allow a non-signatory on the account to withdraw funds and was horrified to discover that that had happened. The client, Cash, did not

¹³Gross negligence was found because there was no evidence that Blum established or agreed with her husband on procedures to operate the trust account even though she knew that he would be in control of it for a substantial period of time; she was overextended in handling the fertility litigation and in advocating legislation dealing with that matter; heard some complaints had come into the office during the time period but did not inquire as to the operation of the trust account; and allowed herself to be disconnected from the management of her office for an extended period of time although she knew that her husband was abusive and controlling.

suffer harm: he received his funds. Nonetheless, respondent is responsible for the funds entrusted to her. Had she reviewed and reconciled her trust account records, she would have known about Ken's and the bank's illicit fund transfers and could have prevented at least some of the misappropriation of Cash's funds. Since this isolated incident, respondent modified her procedures and met with the bank to prevent a reoccurrence. She no longer maintains a trust account.

Given the particular circumstances of this case, the court is confident that there will not be a reoccurrence of this misconduct by respondent. Accordingly, having considered the evidence and the law, the court recommends, among other things, that respondent be actually suspended for 30 days as more fully set forth below.

5. RECOMMENDED DISCIPLINE

Therefore, it is recommended that respondent CAROLINE SUE STERNBERG be suspended from the practice of law for two years; that execution of that suspension be stayed, and that respondent be placed on probation for two years, with the following conditions:

1. Respondent shall be actually suspended from the practice of law for the first 30 days of probation;

2. During the period of probation, respondent shall comply with the State Bar Act and the Rules of Professional Conduct.

3. Within 10 days of any change, respondent shall report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, **and** to the State Bar Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

4. Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report shall be submitted on the next

following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, respondent shall answer fully, promptly, and truthfully, any inquiries of the State Bar Office of Probation which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein.

6. Trust Account Reporting Requirements.

- a. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent shall file with each required report a certificate from respondent and a certified public accountant or other financial professional approved by the Office of Probation, certifying that: respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a “Trust Account” or “Client’s Funds Account”; and respondent has kept and maintained the following:
 - i. a written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client,
 2. the date, amount, and source of all funds received on behalf of such client,
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client, and
 4. the current balance for such client;
 - ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account,
 2. the date, amount, and client affected by each debit and credit, and

3. the current balance in such account.
- iii. all bank statements and canceled checks for each client trust account; and
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii) above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii) above, the reason for the differences, and that respondent has maintained a written journal of securities or other properties held for a client that specifies:
 1. each item of security and property held;
 2. the person on whose behalf the security or property is held;
 3. the date of receipt of the security or property;
 4. the date of distribution of the security or property; and
 5. the person to whom the security or property was distributed.
- b. If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, respondent need not file the accountant's certificate described above.
- c. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

7. Within one year of the effective date of the discipline herein, respondent shall provide to the State Bar Office of Probation satisfactory proof of attendance at a session of the Ethics School and a session of the Client Trust Accounting School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of each session. Arrangements to attend Ethics School and Client Trust Accounting School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent shall not receive MCLE credit for attending Ethics School (Rule 3201, Rules of Procedure of the

State Bar.).

8. Within one year of the effective date of the discipline herein, respondent shall submit to the Office of Probation satisfactory evidence of completion of no less than six hours of MCLE approved courses in law office management. This requirement is separate from any MCLE, and respondent shall not receive MCLE credit for attending Ethics School (Rule 3201, Rules of Procedure of the State Bar.).

9. The period of probation shall commence on the effective date of the order of the Supreme Court imposing discipline in this matter.

10. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years shall be satisfied and that suspension shall be terminated.

11. It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in rule 9.20(c) within 40 calendar days after the effective date of the order showing respondent's compliance with said order.¹⁴

12. It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, Multistate Professional Responsibility Examination Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the State Bar Office of Probation, within one year of the effective date of the discipline herein. **Failure to pass the Multistate Professional Responsibility Examination within the specified time results in actual suspension by the Review Department, without further hearing, until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) and (3), Rules of Procedure of the State Bar.**

¹⁴Respondent is required to file a rule 9.20(c) affidavit even if he has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

6. COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: November ____, 2007

RICHARD A. HONN
Judge of the State Bar Court