

FILED MAY 24, 2002

**REVIEW DEPARTMENT OF THE STATE BAR COURT**

In the Matter of

**MELANIE RAE BLUM,**

A Member of the State Bar.

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**96-O-03531**

**OPINION ON REVIEW**

Respondent Melanie Rae Blum seeks review of a decision recommending that she be placed on probation for a period of three years, conditioned, inter alia, on an actual suspension of nine months. Respondent entered into a “stipulation as to facts and conclusions of law” pursuant to rule 132 of the Rules of Procedure of the State Bar (Rules of Procedure) . Contained in that stipulation is a provision that states “I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea shall be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).”<sup>1</sup> In the balance of that “stipulation as to facts and conclusions of law,” respondent stipulated to committing an act involving moral turpitude in violation of section 6106 and charging a fee contrary to the provisions of section 6146, subdivision (a), in violation of Rules of Professional

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<sup>1</sup>That exception provides that such a plea may not be used against the attorney in a civil suit. All further references to sections are to the Business and Professions Code.

Conduct, rule 4-200(A).<sup>2</sup> She further stipulated that by her gross negligence she failed to maintain client funds in her trust account in two client matters in violation of rule 4-100(A). That stipulation, including the plea of nolo contendere, was accepted by the hearing judge.

Respondent argues that the recommended discipline is excessive in that the understanding between her and her husband/law partner provided that he would handle the office operations, including billing and trust account control, while she became immersed in fertility litigation in a landmark case against the Center for Reproductive Health and the University of California, Irvine (UCI). Following our independent review of the factual matters stipulated to and the balance of the record before us, we had a question as to whether the facts stipulated to, in light of the hearing judge's finding in his discussion of mitigation that respondent reasonably relied on her husband/law partner to properly manage the law firm, supported a finding of moral turpitude in violation of section 6106. As a consequence, we advised the parties of that concern prior to oral argument pursuant to Rules of Procedure, rule 305(b) and invited them to address the issue by written memorandum. Following our review we do find that the record supports the stipulated conclusion that respondent is culpable of committing an act involving moral turpitude but further agree that the record, including the factual stipulation, supports a finding of substantial mitigation.

Respondent urges no actual suspension, while the State Bar argues in support of the hearing judge's recommendation of nine months' actual suspension. Following our review of the record and consideration of respondent's evidence in mitigation showing the abusive and controlling conduct of her then-husband/law partner, we believe that the recommended period of actual suspension is excessive and shall recommend that respondent's suspension be reduced to 30 days of actual suspension as a condition of a two-year period of probation, otherwise on the

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<sup>2</sup>All further references to rules are to the Rules of Professional Conduct, unless otherwise indicated.

conditions recommended by the hearing judge.

We deny respondent's motion for augmentation of the record or remand for additional evidence, noting that the parties were offered, and took, the opportunity to provide extensive evidence concerning respondent's relationship with her then-husband/law partner, including the testimony of two psychiatrists and numerous character witnesses.

### **FACTUAL BACKGROUND**

Respondent was admitted to practice law in California in December 1981. The stipulation of the parties, in addition to the plea of nolo contendere, provides: "The parties agree to be bound by the factual stipulations contained herein regardless of the degree of discipline recommended or imposed; [¶] . . . The factual statements contained in this Stipulation constitute admissions of fact and may not be withdrawn by either party, except with Court approval; [¶] . . . This Stipulation relates only to the facts set forth below. Evidence to prove or disprove a stipulated fact is inadmissible at trial. Neither party waives its right to submit and present evidence relating to mitigation or aggravation."

We rely on the factual stipulation of the parties for the factual background pertaining to culpability and to aid us in recommending discipline. We also consider the testimony of respondent that does not contradict the stipulation, her medical experts' and character testimony, and the medical testimony presented by the State Bar as it pertains to aggravation and mitigation.

Respondent and her former husband, Mark Roseman (Roseman), an attorney,<sup>3</sup> were partners in the practice of law and were cosignatories on their client trust account at the Bank of America. During the relevant period, respondent took on more work than she could comfortably handle. In 1995, respondent became immersed in "fertility litigation" and served as lead counsel in a landmark case against UCI and its now-defunct Center for Reproductive Health, commonly devoting 18 hours a day to the matter, often interviewing clients all day, working in her office

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<sup>3</sup>Roseman resigned from the State Bar, effective March 19, 2000.

until 10:00 or 11:00 at night. The cases were brought on behalf of patients whose eggs and embryos had allegedly been stolen by nationally recognized UCI-affiliated physicians and implanted in other female patients. As a part of that litigation, respondent represented 36 couples in a settlement with the University of California Regents. Additionally, since she had the largest number of cases, as well as a wealth of documents, she assisted other attorneys involved in that litigation with their fertility cases, ultimately enabling 74 of the 100 cases to be resolved.

As a result of these activities respondent overextended herself. During this period of time she was also experiencing significant medical problems, including disabling migraine headaches occurring as frequently as once every one or two weeks, pain from a ruptured disc in her back, and Meniere's disease.<sup>4</sup> Respondent was also involved in obtaining California legislation relating to the unauthorized use of human eggs and embryos. As a result, respondent further overextended herself.

In the operation of the law practice it was clear that Roseman had time to manage the day-to-day operations of the law office. Respondent believed she could rely on Roseman to properly administer the practice. Prior to Roseman assuming management there had been no problems with the trust account, and it was only after he assumed those duties that trust account problems began. During the period he managed the office, Roseman grossly mismanaged the financial aspects of the practice. Some deposits were made to the incorrect account, some disbursements were made from the wrong account, bookkeeping was chaotic, and some client funds were improperly used for funding unrelated cases, resulting in trust fund deficiencies.

During the relevant period respondent heard that some complaints had come into the office, but Roseman insulated her from the full nature and extent of the situation. He instructed the office staff not to tell respondent anything that would upset her and divert her attention from

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<sup>4</sup>The record shows that disease to cause inflammation of the inner ear, resulting in a loss of balance or hearing, or both.

the fertility cases, which Roseman anticipated would be very lucrative. Neither the stipulation nor the balance of the record discloses the time respondent heard complaints come to the office, however the stipulation does provide that respondent's "failure to make inquiry as to any office problems when she had reason to understand that such inquiry should have been made, constituted gross negligence." While the stipulated facts, including the quoted sentence, do not require a conclusion of gross negligence, those facts permit such a conclusion, and under the circumstances the plea of *nolo contendere* compels that conclusion.

Between March 1996 and November 1996 respondent learned that her clients, the Huffmans (discussed, *post*), had received less than their proper distributive share of the settlement of their case. While respondent saw to it that the Huffmans received the balance they were entitled to, this knowledge of the error in handling client funds may have put her on notice that the office was not handling those funds as required by the Rules of Professional Conduct. We note that the only other evidence in the record relating to the time that respondent knew or should have known of the mishandling of client funds came from respondent, who testified that she was uncertain when she heard the complaints, but that it was within approximately two years of the time she was testifying (January 2001). We note that the charges before us relate to events occurring in 1995 and 1996.

The factual portion of the stipulation concluded with, "[r]espondent allowed herself to be disconnected from the management of her office for an extended period of time due to her tremendous work load at a time when other personal demands made it difficult, if not impossible, to pay adequate attention to office management." Under Rules of Procedure, rule 132(b)(4)<sup>5</sup> we accept that not only has respondent admitted the stipulated facts, but she has also acknowledged

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<sup>5</sup>That rule provides, in part: "If the respondent pleads *nolo contendere*, the stipulation shall include an acknowledgement that the respondent completely understands that the plea of *nolo contendere* shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation."

her culpability of the charges numerated in the stipulation. As we will discuss, however, even in the face of respondent's acknowledgment of culpability under that rule we must satisfy ourselves that the record supports that admission of culpability. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 471.)

We note with interest, there is nothing in the record suggesting that respondent and Roseman had any discussion or understanding regarding the manner in which Roseman was to handle the trust account, nor does the record show any evidence regarding either Roseman's past experience in handling trust account matters or his experience in managing a law office.<sup>6</sup> Further the record is barren of any evidence of standards established by the office, or by respondent, for either the operation of the trust account or the general management of the office.

#### **THE CLIENT MATTERS AND SPECIFIC CHARGES**

In April 1995 Mr. and Mrs. Huffman employed respondent's firm to prosecute a claim for medical malpractice. The retainer agreement provided that respondent's firm would be compensated by a contingent fee of 40 percent of the first \$50,000 recovered. Section 6146 restricts contingent attorney fees to 40 percent of the first \$50,000 recovered, but measures the amount recovered as the net sum recovered after deducting any disbursements or costs incurred in the prosecution or settlement of the claim. When the case settled in November 1995, respondent's firm took, as fees, 40 percent of the gross settlement and then deducted the costs incurred in the settlement of the claim from the remainder and paid the amount left to the Huffmans. This resulted in a March 1996 underpayment of \$5,618.25 to the Huffmans. When the Huffmans brought the underpayment to respondent's attention she saw to it that the matter was rectified in September 1996.<sup>7</sup> Between the time of the settlement and the initial payment,

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<sup>6</sup>The record does show that Roseman changed his practice specialty "all the time" and that he had frequent emotional outbursts that had the office staff in fear of him.

<sup>7</sup>The record does not show when the matter was called to respondent's attention.

respondent's firm trust account on at least two occasions dropped far below the amount the firm was required to hold for the benefit of the Huffmans. On January 17, 1996, the balance dropped to about \$712, and by February 6, 1996, it reached a low of about \$67.

The stipulation acknowledges that respondent charged the Huffmans an illegal fee in violation of rule 4-200(A), mishandled their funds in violation of rule 4-100(A), and committed an act involving moral turpitude in the handling of respondent's trust account in violation of section 6106.

In a second client matter and as stipulated by the parties, on or about July 31, 1996, Judith and Richard Quinonez retained respondent to represent them in a medical malpractice claim. In September 1996 the claim was settled for \$75,000, and the funds were deposited into the firm trust account. After the deduction of costs and attorney's fees it was required that there remain in the account \$44,531 for the benefit of the Quinonezes. On September 27, 1996, the trust account balance fell to \$36,880, on October 17 the balance was \$2,102 and on October 25 the balance was approximately \$3,554. The Quinonezes received their funds in March 1997.

In the Quinonez matter, respondent acknowledges a violation of rule 4-100(A), requiring an attorney to hold funds of a client in a client trust account, and section 6106, involving moral turpitude arising out of the alleged trust account violation.

## **DISCUSSION OF CULPABILITY**

### **THE MORAL TURPITUDE CHARGES**

Under the heading "Conclusions of Law" the stipulation of the parties provided, "[r]espondent's aforesaid gross negligence constituted moral turpitude in violation of section 6106 of the Business and Professions Code, and also resulted in charging the Huffmans an illegal fee in violation of Rule 4-200(A) of the Rules of Professional Conduct in that the charge violated Section 6146(a) of the Business and Professions Code. Also, by her gross negligence she violated Rule 4-100(A) of the Rules of Professional Conduct relating to the handling of client

trust account funds for the Huffmans . . . .” As we have indicated, where there are stipulations as to conclusions of law, we must nonetheless satisfy ourselves that the factual record supports such a conclusion.

A plea of nolo contendere entered pursuant to Rules of Procedure, rule 132(b)(4) does not relieve this court of the obligation to determine that there is a factual record sufficient to support a determination of culpability. Rule of Procedure, rule 132(b) (4), by implication, requires stipulated facts that support an admission of culpability.<sup>8</sup> Section 6085.5, subdivision (c) acknowledges that this court require a factual basis for a nolo contendere plea in that it provides that such factual basis may not be used against a respondent in a civil suit. The Supreme Court has made clear our obligation to determine the factual basis for a stipulation as to culpability. (*Giovanazzi v. State Bar, supra*, 28 Cal.3d 465, 471; *Inniss v. State Bar* (1978) 20 Cal.3d 552, 555.)

The State Bar argues that a respondent cannot challenge on review culpability conclusions of trust account violations and other misconduct that was stipulated to at the hearing level, relying on *In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708, 713. A reading of that case makes clear the record fully supported a finding of culpability as to the stipulated charges. Also, regardless of respondent’s right to challenge the findings made below, we have an affirmative duty to determine that such findings of culpability are supported by the record.

Consequently, we consider the Supreme Court’s definition of moral turpitude in measuring the charge of a violation of section 6106, and then we look to the conduct necessary to find culpability under that section.

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<sup>8</sup>That rule provides in part: “If the respondent pleads nolo contendere, the stipulation shall include an acknowledgement that the respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability . . . .”

While moral turpitude as included in section 6106 generally requires a certain level of intent, guilty knowledge, or willfulness (see *Sternlieb v. State Bar* (1990) 52 Cal.3d 317), 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 (*Giovanazzi v. State Bar, supra*, 28 Cal.3d 465, 475; *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020).

Looking to the stipulated facts, there is no evidence that respondent established or agreed with Roseman on procedures for the operation of the trust account, even though she knew he was to be in control of that account for a substantial period of time. The record shows that respondent overextended herself in the handling of the fertility cases; further overextended herself in advocating legislation dealing with that subject; heard some complaints during the "relevant period," apparently including a specific complaint from the Huffmans during that period; made no inquiry as to the operation of the firm trust account; and nonetheless "allowed herself to be disconnected from the management of her office for an extended period of time . . . ." This occurred during a period when Roseman, whom respondent knew to be abusive and controlling, was grossly mismanaging the firm's trust account. In our judgment this is sufficient evidence to establish respondent's gross negligence in violation of section 6106.<sup>9</sup>

Under these circumstances, we reject the hearing judge's observation, contained in his discussion of appropriate discipline, that respondent's "reasonable reliance" on Roseman led to her inattention to the trust account and conclude that such reliance was not reasonable.

#### THE TRUST ACCOUNT AND UNLAWFUL FEES CHARGES

As noted by the State Bar, an attorney has a "personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds." (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 795.) These duties are nondelegable. (*Coppock v.*

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<sup>9</sup>We consider respondent's and the State Bar's psychiatric evidence under the discussion of mitigation, *post*.

*State Bar* (1988) 44 Cal.3d 665, 680.) This does not mean that an attorney is culpable of a moral turpitude violation by not personally managing his or her trust account, provided that attorney reasonably relies on a partner, associate, or other responsible employee to care for that account. However, even that reasonable reliance on another to care for the trust account does not relieve the attorney from the professional responsibility to properly maintain funds in that account. That is, in the handling of client funds, an attorney has a direct professional responsibility to his or her client, and the attorney does not avoid that direct professional responsibility by, even reasonable, reliance on a partner, associate or responsible employee. (Cf. *Ibid.*)

In both the Huffman and Quinonez matters it is clear from the factual stipulation that client funds were not retained in the trust account. Moreover, as noted, the stipulation establishes that respondent “allowed herself to be disconnected from the management of her office for an extended period of time . . . .” This portion of the stipulation indicates that respondent failed to take reasonable steps to comply with her personal, nondelegable duty to monitor client funds and her trust account. Respondent’s reliance on Roseman did not relieve her of her obligation to see that those funds were retained in the firm trust account. Under the circumstances of this case, we therefore agree with the hearing judge’s determination of culpability of violations of rule 4-100(A) in both the Huffman and Quinonez matters.

We note that we are not the only state to determine that an attorney is not relieved from professional responsibility when he or she relies on a partner to maintain client trust accounts. In *Matter of Pollack* (N.Y. App. Div. 1989) 142 A.D.2d 386 [536 N.Y.S.2d 437], attorney Pollack was determined to be culpable of professional misconduct where his partner deposited funds belonging to Pollack’s client into an account which was not designated as a trust or escrow account and which contained both office and client funds. The partner also allowed the amount in the account to drop below the amount of client funds deposited therein. (*Pollack, supra*, 536 N.Y.S.2d at p. 438.) Notwithstanding Pollack’s claims that he was not aware of his partner’s

withdrawal of funds from the account, the evidence established that during the time in question, Pollack failed to inquire of his partner about the client funds, failed to examine even one bank statement, and failed to inquire about his client account. (*Id.* at pp. 438-439.) The court held that Pollack was ““under a duty to know what was going on”” and therefore ““must share the burden of responsibility for the acts of his partner even though he claims he had no actual knowledge of some of the acts . . . .”” (*Id.* at p. 439.)

Later that same year, the same court held that an attorney was subject to discipline based upon his partner’s mishandling of an escrow account “to the extent that [the attorney] assumed or should have assumed some responsibility for his partner’s conduct of their law practice and care of the escrow account.” (*Matter of Sykes* (N.Y. App. Div. 1989) 150 A.D.2d 126, 127 [546 N.Y.S.2d 376, 377].) The court there disagreed with a referee’s determination that Sykes was culpable of conversion and misappropriation of clients’ funds but found him culpable of, inter alia, failing to maintain a duly constituted escrow account and commingling escrow funds with personal and business funds. (*Sykes, supra*, 546 N.Y.S.2d at p. 127.)

We conclude that *Sykes* and *Pollack* are consistent with our determination that respondent had a nondelegable duty to monitor the trust account, failed to undertake any effort to comply with this duty, and under the circumstances present here is culpable of trust account violations notwithstanding reliance on her partner to manage such account.

In both the Huffman and Quinonez matters it is clear from the factual stipulation that client funds were not retained in the trust account. Respondent’s reliance on Roseman did not relieve her of her obligation to see that those funds were retained in the firm trust account, and we agree that the hearing judge’s acceptance of the stipulation and nolo contendere plea was proper on the charges of violations of rule 4-100(A) in both the Huffman and the Quinonez matters.

The nolo contendere plea included an acknowledgment of charging an illegal fee in

violation of rule 4-200(A) in the Huffman matter. The facts stipulated to clearly support respondent's culpability of that charge.

## **DISCUSSION OF DISCIPLINE**

### MITIGATION

At the time of the found misconduct respondent had at least 14 years of discipline-free practice. This is a significant factor in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [10 years discipline-free practice]; Std. 1.2(e)(i), Rules Proc., tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct (Stds.).)

In addition to the stipulation, the record contains psychiatric testimony presented by both the State Bar and respondent that relates to respondent's relationship with Roseman and her inability to confront him in his handling of the office trust account. Dr. Kausal Sharma, who has done over 100 attorney evaluations for the State Bar, and in this case was called by the State Bar, testified that, based on his consultation with respondent, he was of the opinion that she was under extreme emotional difficulties during the time covered by the charging allegations and that her ability to cope with Roseman and his handling of financial affairs was substantially impaired.

Dr. Lawrence Sporty, a senior lecturer in the department of psychiatry and neurology at UCI and a well-qualified psychiatrist, started counseling both respondent and Roseman to determine if their marriage could be saved. At the second session, when Dr. Sporty confronted Roseman about his conduct, Roseman stormed from Dr. Sporty's office. At a subsequent session with respondent, Roseman burst into Dr. Sporty's office, unannounced, requiring Dr. Sporty to eject him from the office.

Dr. Sporty testified as respondent's treating physician that in his opinion respondent suffered from post-traumatic stress disorder; that Roseman was abusive, dominating and controlling; and that respondent had suffered abuse, both physical and mental, at his hands. He further testified, "[i]t is my opinion [respondent] was incapable of confronting and stopping her

husband in his demands that she stay away from anything to do with the trust accounts and finances. . . .”

We agree that respondent suffered from extreme emotional difficulties during the time of found misconduct. This too is a mitigating circumstance. (Std. 1.2(e)(iv).) The record shows that upon her ultimately coming to grips with the activities of Roseman she, with psychiatric help, was able to confront him and disassociate herself from him. Upon her full understanding of what he had done she terminated their professional association and commenced dissolution of marriage proceedings. Through the time of trial in this matter, respondent continued to obtain psychiatric help. Dr. Sporty opined that respondent had gained insight into the conditions that permitted Roseman to manipulate her and that the control he gained over her “would not occur again in her life. . . .”

Respondent has fully and candidly acknowledged her misconduct by way of her stipulation to the facts set forth in the charges before us and stipulated to a mental examination by a State Bar-appointed psychiatrist. We consider this in mitigation. (Std. 1.2(e)(v).) She made restitution to the Huffmans and has repaid some \$200,000 of the approximately \$500,000 in debt that her husband has left her with. Respondent has taken charge of all aspects of the operation of her law office, including the handling of the finances and the trust account. Thus, respondent has taken objective steps to atone for the consequences of her misconduct, and this too is a mitigating factor. (Std. 1.2(e)(vii).)

As character witnesses, respondent called five attorneys and a senior police investigator for the California Medical Board. Three of the attorneys specialized in medical and dental malpractice, one represented physicians appearing before the California Medical Board, and one specialized in insurance defense work relating to environmental law and products liability. Each of the attorneys worked either with or against respondent, or was involved in litigation with respondent’s then-husband. Each, whether opposing her or working with her, testified to her

extreme honesty and truthfulness and her adhering to ethical lines. Each was familiar with respondent's misconduct and attributed it to respondent's husband and respondent's complete immersion in the UCI fertility matter. The senior investigator for the California Medical Board considers respondent the most outstanding attorney he has met and testified she has helped society by her work on the fertility cases, including working with the Federal Bureau of Investigation, United States Attorney's Office, United States Customs, Food and Drug Administration, and other police agencies. He believes that the disciplinary problems resulted from respondent being overworked because of the time she devoted to the fertility cases. This evidence meets the requirements for mitigation under standard 1.2.(e)(vi).

#### AGGRAVATION

Respondent engaged in multiple acts of misconduct, constituting aggravation under standard 1.2(b)(ii) and, in further aggravation, her misconduct significantly harmed her clients, the Huffmans, in that it delayed their receiving the correct share of their settlement proceeds. (Std. 1.2(b)(iv).)

#### DISCUSSION

In this case we take particular note of the Supreme Court's observation that "[t]he court's principal concern in disciplinary proceedings is protection of the public and preservation of confidence in the legal profession . . . ." (*Baker v. State Bar* (1989) 49 Cal.3d 804, 822.) "[T]he circumstances in which the misconduct occurred or subsequent efforts by the attorney to correct the condition that precipitated the misconduct may demonstrate that the misconduct will not likely recur' [citation] and thus are relevant to the disciplinary sanctions, if any, to be imposed." (*Sternlieb v. State Bar, supra*, 52 Cal.3d 317, 331.) In the present case we consider it unlikely that the misconduct of which respondent has been found culpable will recur.

The hearing judge considered *Sugarman v. State Bar* (1990) 51 Cal.3d 609 to be the case most on point in considering discipline. There, Sugarman was found culpable of committing acts

of moral turpitude in violation of the section 6106 and violating former rule 5-101, pertaining to business transaction with clients, and was actually suspended for one year. In the matter before us respondent has presented substantially more mitigating circumstances than did Sugarman. Among those mitigating circumstances are respondent's 14 years of prior discipline-free practice. "The absence of a prior disciplinary record is in itself an important mitigating circumstance." (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132, fn. 10.) Also, in *Sugarman*, the attorney relied on his secretary, and not on an attorney-partner, nor is there any evidence that such reliance was reasonable, and as the court said, "we do not find petitioner suffered from such extreme financial pressures that his two acts of misconduct can reasonably be understood as a desperate response to such pressure." (*Sugarman v. State Bar, supra*, 51 Cal.3d 609, 619.) Also, there is no evidence that Sugarman suffered from the psychological pressure and isolation from the trust account problems that Roseman imposed on respondent in the present case. We determine that in the matter before us the mitigation is far greater than that in *Sugarman*.

We deem *Waysman v. State Bar* (1986) 41 Cal.3d 452, *Giovanazzi v. State Bar, supra*, 28 Cal.3d 465, and *Sternlieb v. State Bar, supra*, 52 Cal.3d 317 to be more closely aligned with the factual situation before us. In *Waysman* the attorney had formed a two person partnership and three weeks later the partner quit, leaving Waysman with 150 cases. (*Waysman v. State Bar, supra*, 41 Cal.3d at p. 454.) On receiving a \$24,000 settlement check and learning that it would take three weeks to clear his trust account, Waysman telephoned his secretary to deposit the check in his general account where it would clear in seven days. (*Id.* at pp. 454-455.) On returning from an out-of-town trial Waysman learned his secretary had used a set of presigned checks drawn on the office account to pay office expenses, including the salary of herself and her husband, and had then quit, ultimately resulting in the expenditure of the entire \$24,000. (*Id.* at p. 455.) Waysman was in the process of making restitution as of the time of the decision and had promptly acknowledged his misconduct. (*Id.* at pp. 455, 458-459.) The court noted that there

was no prior record of discipline and that Waysman suffered from serious alcohol-related problems. Waysman was suspended from practice for six months, that suspension was stayed, and he was placed on probation for one year. (*Id.* at p. 459.)

In *Sternlieb* the court found that the attorney misappropriated slightly over \$4,000 of funds belonging to a client and her husband, the opposing party in a divorce action that Sternlieb was handling, but that the evidence did not support a finding of moral turpitude. Sternlieb had no prior discipline and had an excellent reputation as an attorney, and the hearing referee in the State Bar proceedings found that the misconduct was not likely to recur. (*Sternlieb v. State Bar, supra*, 52 Cal.3d. at pp. 331-332.) Sternlieb was placed on probation for one year with a thirty-day actual suspension. (*Id.* at p. 333.)

In *Giovanazzi*, the attorney was found culpable of, among other things, the commission of acts involving moral turpitude and misappropriation. He did not repay an obligation to a client, approximately \$75,000, until notified of the pending disciplinary investigation. (*Giovanazzi v. State Bar, supra*, 28 Cal.3d at pp. 474-475.) In that case a divided court added an actual suspension of 30 days to the recommended three years of stayed suspension. (*Id.* at pp. 468-475.)

In the instant case, the record demonstrates that respondent was unable to confront Roseman concerning his handling of the trust account. Absent equally strong evidence of respondent's recovery from such a disability concerning such a fundamental duty of a lawyer we would recommend severe remedial discipline. Respondent's compelling evidence of her actions to terminate her relations with Roseman and her continuing psychiatric treatment make clear that such a recovery is well under way. Respondent has expressed remorse for the misconduct; was candid with the State Bar in stipulating to the misconduct; has taken effective steps to avoid a repetition of that misconduct including severing her relations with Roseman and continuing in therapy; and has made a contribution to society in seeking, and obtaining, legislation dealing with

human reproduction. While serious misconduct occurred as the result of respondent's inattention to financial matters, including the trust account she maintained with Roseman, in our judgment a future recurrence of such problems is unlikely. The hearing judge's recommended condition of continued psychiatric treatment lends assurance to this conclusion.

### **RECOMMENDED DISCIPLINE**

We recommend that respondent Melanie Rae Blum be suspended from the practice of law for three years, that execution of this suspension be stayed, and that she be placed on probation for two years on the conditions that she be actually suspended for 30 days and that she comply with each of the remaining conditions of probation recommended by the hearing judge.

#### **Professional Responsibility Examination**

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 after the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the State Bar's Probation Unit in Los Angeles during the same period.

#### **Costs**

It is recommended that costs be awarded to the State Bar pursuant to Business and

Professions Code section 6086.10 and that those costs be payable in accordance with Business and Professions Code section 6140.7.

OBRIEN, J.\*

We concur:

STOVITZ, P. J.

WATAI, J.

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\*Judge Pro Tem of the State Bar Court, appointed by the State Bar Board of Governors under rule 14 of the Rules of Procedure of the State Bar.

**Case No. 96-O-03531**

***In the Matter of Melanie Rae Blum***

**Hearing Judge**

Carlos E. Velarde

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