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AUG 19 2003 *HOC*

STATE BAR COURT  
CLERKS OFFICE  
LOS ANGELES

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**PUBLIC MATTER**

**STATE BAR COURT**

**HEARING DEPARTMENT – LOS ANGELES**

In the Matter of  
**RICHARD DAVID COMESS,**  
No. 198665  
A Member of the State Bar.

Case No. 01-O-02777 AIN  
**DECISION**

**INTRODUCTION**

In this default proceeding, Respondent Richard David Comess is charged with multiple acts of misconduct in two client matters and with failure to cooperate with the State Bar’s disciplinary investigations of those matters.

For the reasons stated below, this Court finds, by clear and convincing evidence, that Respondent is culpable of most of the charged acts of misconduct and will recommend that Respondent be suspended from the practice of law for a period of three years, that execution of that suspension be stayed and that Respondent be actually suspended from the practice of law for a period of six months and until (a) Respondent makes restitution to his client, Ray E. Gover, in the amount of \$1,300; and (b) the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar (“Rules of Procedure”).

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1 The State Bar was represented in this proceeding by Deputy Trial Counsel Lee Ann Kern.  
2 Respondent did not participate at any stage of this proceeding, either personally or through counsel.

3 On May 29, 2003, the State Bar filed its Brief Regarding Level of Discipline in Lieu of  
4 Default Hearing. In that brief, the State Bar waived its right to a default hearing. This matter was  
5 taken under submission on May 29, 2003.

6 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

7 Respondent was admitted to the practice of law in California on December 9, 1998, and has  
8 been a member of the State Bar of California since that time.

9 **A. Counts One through Five (The Gover Matter)**

10 On October 19, 2000, Respondent met with Ray E. Gover to discuss Gover's intent to appeal  
11 a ruling of the trial court in an action entitled *Ray E. Gover v. Technicolor, Inc.*, Los Angeles  
12 Superior Court Case No. BC 189024. At the conclusion of their meeting, Gover left the reporter's  
13 transcript and four volumes of his files with Respondent. Respondent subsequently met with Gover  
14 on November 13, 2000, to assist him in the filing of a motion to extend time for the filing of Gover's  
15 opening brief on appeal. The extension request was filed by Gover, acting *in propria persona*, on  
16 November 13, 2000 and was granted by the court of appeal on November 16, 2000.

17 On December 14, 2000, Gover and Respondent entered into an agreement whereby Gover  
18 agreed to pay Respondent the sum of \$1,300 for the preparation and filing of the appellant's opening  
19 brief on Gover's behalf. Gover paid the \$1,300 to Respondent in cash on December 14, 2000.

20 On December 15, 2000, Respondent filed a motion to extend the time within which to file  
21 the opening brief in Gover's appeal. Respondent signed the motion as "Richard D. Comess,  
22 Attorney for Plaintiff/Appellant, in pro per." The court of appeal granted Respondent's extension  
23 request on December 18, 2000, but advised Respondent that, if the opening brief was not filed within  
24 15 days, Gover's appeal would be dismissed.

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1           Gover sent a second certified letter to Respondent on April 25, 2001, in which he asked  
2 Respondent to sign a substitution of attorneys. Gover also asked Respondent for all of the transcripts  
3 and evidence Gover had provided to him and for a full refund of the \$1,300 that Gover had paid to  
4 Respondent for preparation of the opening brief on appeal. Respondent did not reply to Gover's  
5 letter and neither signed the substitution of attorneys, returned Gover's files and documents nor  
6 refunded any portion of the \$1,300 fee.

7           On May 2, 2001, Gover personally filed a substitution of attorney and a motion to vacate the  
8 court's dismissal of his appeal. The court of appeal granted Gover's motions on May 2, 2001, and  
9 gave him until May 17, 2001, to file his opening brief on appeal.

10           Respondent returned Gover's transcripts and evidence to him on May 15, 2001. On May 17,  
11 2001, Gover filed a request for an extension of time to file his opening brief on appeal and informed  
12 the court of appeal that he had only received his transcript and evidence from Respondent on May  
13 15, 2001. Nevertheless, by order filed May 18, 2001, the court of appeal denied Gover's extension  
14 request and, by subsequent order filed June 1, 2001, dismissed Gover's appeal for the failure to file  
15 his appellant's opening brief.

16           On November 6, 2002, the State Bar opened an investigation of Respondent's conduct in the  
17 Gover matter pursuant to a complaint filed by Ray E. Gover. On that date, State Bar Investigator  
18 Keith Jones wrote to Respondent regarding the Gover matter. Investigator Jones' letter asked  
19 Respondent to reply in writing to specified allegations of misconduct being investigated by the State  
20 Bar in the Gover matter. The letter was properly mailed to Respondent by first-class mail, addressed  
21 to him at his official address.

22           The U.S. Postal Service returned Investigator Jones' letter as undeliverable with a printed  
23 label indicating that a forwarding order had expired and listing a forwarding address for Respondent  
24 of 345 Homewood Road, Los Angeles, California 90049-2711.

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1 On November 14, 2002, Investigator Jones wrote a second letter to Respondent asking him  
2 to respond to specified allegations of misconduct in the Gover matter. Investigator Jones mailed this  
3 second letter to Respondent by first-class mail addressed to him at the Homewood Road address.  
4 The U.S. Postal Service did not return this letter to the State Bar as undeliverable.

5 **1. Count One (Rule 3-110(A), Rules of Professional Conduct)**

6 Respondent is charged in Count One of the NDC with a wilful violation of rule 3-110(A) of  
7 the Rules of Professional Conduct, which provides that a member of the State Bar shall not  
8 intentionally, recklessly or repeatedly fail to perform legal services with competence.

9 The Court finds Respondent culpable, by clear and convincing evidence, of the charged  
10 violation of rule 3-110(A). Pursuant to the provisions of rule 202(d)(1) of the Rules of Procedure,  
11 upon the entry of Respondent's default in this proceeding, the well-pleaded factual allegations set  
12 forth in the Notice of Disciplinary Charges are deemed admitted. (*In the Matter of Heiner* (Review  
13 Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 318.) The admitted factual allegations of the NDC  
14 establish that Respondent was retained by Gover to prepare and file an opening brief in his appeal  
15 in the *Gover v. Technicolor, Inc.* action. Despite his agreement to perform those legal services, his  
16 receipt of \$1,300 in advanced fees, his substitution into the appeal and his preparation of at least  
17 three requests for extensions of time, Respondent subsequently failed to prepare and file the  
18 appellant's opening brief. Respondent's failure to competently perform these agreed-upon legal  
19 services was either intentional or reckless and constitutes a wilful violation of rule 3-110(A).

20 **2. Count Two (Business and Professions Code Section 6068, Subdivision (m))**

21 Respondent is charged in Count Two of the NDC with a violation of Business and  
22 Professions Code section 6068, subdivision (m), which provides that it is the duty of a member of  
23 the State Bar to promptly respond to the reasonable status inquiries of clients and to keep clients  
24 reasonably informed of significant developments in their legal matters.

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1 The Court finds Respondent culpable, by clear and convincing evidence, of failing to  
2 promptly respond to his client's reasonable status inquiries in violation of section 6068, subdivision  
3 (m). The admitted allegations of the NDC establish that, beginning in mid-March 2001, Gover made  
4 repeated telephone calls to Respondent and left messages with Respondent's wife and children  
5 asking Respondent to return his calls. In addition, Gover mailed at least two certified letters to  
6 Respondent and faxed one of the letters to him. Despite Gover's repeated efforts to contact him,  
7 Respondent neither replied to Gover's letters nor responded to his telephone calls. Respondent's  
8 failure to respond to these letters and telephone calls constitutes a failure to promptly respond to  
9 client inquiries in violation of Business and Professions Code section 6068, subdivision (m).

10 **3. Count Three (Rule 3-700(D)(2), Rules of Professional Conduct)**

11 Respondent is charged in Count Three of the NDC with a wilful violation of rule 3-700(D)(2)  
12 of the Rules of Professional Conduct, which provides that a member whose employment has  
13 terminated shall promptly refund any part of a fee paid in advance that has not been earned.

14 The Court finds Respondent culpable, by clear and convincing evidence, of a wilful violation  
15 of rule 3-700(D)(2). The admitted allegations of the NDC establish that Gover paid Respondent the  
16 sum of \$1,300 in cash to prepare and file an appellant's opening brief on his behalf in the appeal of  
17 the *Gover v. Technicolor, Inc.* action. Respondent failed to file the appellant's opening brief,  
18 resulting in the dismissal of Gover's appeal. The only legal services performed by Respondent that  
19 are evident from the record of this proceeding are the three requests for extensions of time for the  
20 filing of the brief. However, since Respondent ultimately failed to file the appellant's opening brief,  
21 a failure which resulted in the dismissal of Gover's appeal, it is clear that these extensions of time  
22 were merely preliminary to the preparation of the opening brief itself and these limited legal services,  
23 without the subsequent filing of the brief, were of no value to Gover. Therefore, the Court concludes  
24 that Respondent did not earn any portion of the \$1,300 in advance fees paid by Gover.

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1 A status conference in the *ASA, Inc. v. Pacific Bell* action was held on September 14, 2001,  
2 but Respondent failed to appear at the conference. In October 2001, Respondent told Manighalam  
3 that he had not yet served the summons and complaint upon Pacific Bell.

4 On November 9, 2001, Manighalam went to the court to review the file in the *ASA, Inc. v.*  
5 *Pacific Bell* action. From his review of the court file, Manighalam learned that Respondent had  
6 failed to appear for status conferences on both September 14, 2001 and October 16, 2001, and that  
7 the court had scheduled an Order to Show Cause re Dismissal ("OSC") for November 21, 2001 due  
8 to Respondent's failure to appear at the status conferences. The court had served Respondent with  
9 a copy of the OSC.

10 Manighalam appeared on behalf of ASA, Inc. at the OSC hearing on November 21, 2001,  
11 but Respondent did not appear at the hearing. Manighalam told the court that he had been unable  
12 to contact Respondent. The court continued the OSC hearing until January 24, 2002, and served  
13 Respondent with notice of the new hearing date.

14 Manighalam telephoned Respondent following the November 21, 2001, hearing and  
15 terminated his legal services. From November 21, 2001, until at least the date upon which the NDC  
16 in this case was filed (i.e., March 18, 2003), Manighalam has repeatedly telephoned Respondent in  
17 order to obtain the return of his documents and records relating to ASA, Inc.'s case against Pacific  
18 Bell. Respondent has not responded to Manighalam's requests.

19 On December 7, 2001, Manighalam sent a letter by to Respondent by Federal Express  
20 addressed to him at both his office and at 345 Homewood Road, Los Angeles, California 90049-  
21 2711. In the letter, Manighalam requested that Respondent immediately return all of the documents  
22 and records in his possession relating to the *ASA, Inc. v. Pacific Bell* action. Respondent did not  
23 reply to Manighalam's request for the documents.

24 On January 23, 2002, the State Bar opened an investigation of Respondent's conduct in the  
25 *ASA, Inc.* matter pursuant to a complaint filed by Shahram Manighalam. On that date, State Bar  
26 Investigator Michael Wolverton wrote a letter to Respondent regarding Manighalam's complaint.

1 Investigator Wolverton's letter asked Respondent to reply in writing to specified acts of misconduct  
2 being investigated by the State Bar in the ASA, Inc. matter. The letter was properly mailed to  
3 Respondent by first-class mail, addressed to Respondent at his official membership address. The  
4 U.S. Postal Service did not return Investigator Wolverton's letter to the State Bar as undeliverable.  
5 Respondent did not respond to Investigator Wolverton's letter and did not otherwise communicate  
6 with him regarding the ASA, Inc. matter.

7 **1. Count Six (Rule 3-110(A), Rules of Professional Conduct)**

8 Respondent is charged in Count Six of the NDC with a wilful violation of rule 3-110(A) of  
9 the Rules of Professional Conduct. The Court finds, by clear and convincing evidence, that  
10 Respondent is culpable of the charged violation.

11 The admitted factual allegations of the NDC establish that Respondent was retained to  
12 represent ASA, Inc.'s interests in litigation against Pacific Bell. Although Respondent filed an  
13 action on behalf of ASA, Inc., he failed to taken any further action on ASA, Inc.'s behalf.  
14 Respondent failed to serve the summons and complaint, failed to appear at two status conferences  
15 and failed to appear at a hearing noticed by the court on its Order to Show Cause re Dismissal. As  
16 a result, this Court concludes that Respondent intentionally or recklessly failed to competently  
17 perform the legal services for which he was retained in wilful violation of rule 3-110(A).

18 **2. Count Seven (Business and Professions Code Section 6068, Subdivision (m))**

19 Respondent is charged in Count Seven of the NDC with a violation of Business and  
20 Professions Code section 6068, subdivision (m). The State Bar charges that Respondent violated  
21 section 6068, subdivision (m) in two ways, i.e., by failing to keep his client, Manighalam, informed  
22 of significant developments in the *ASA, Inc. v. Pacific Bell* action and by failing to promptly respond  
23 to Manighalam's reasonable status inquiries.

24 The Court finds Respondent culpable, by clear and convincing evidence, of a violation of  
25 section 6068, subdivision (m) as a result of his failure to notify Manighalam of significant  
26 developments in the *ASA, Inc. v. Pacific Bell* action, but does not find him culpable of failing to  
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1 respond to Manighalam's status inquiries.

2       As to Respondent's failure to notify Manighalam of significant developments in the *ASA, Inc.*  
3 *v. Pacific Bell* action, the admitted allegations of the NDC establish that Respondent told  
4 Manighalam in October 2001 that he had not yet served the summons and complaint upon Pacific  
5 Bell. The admitted allegations of the NDC also establish that Manighalam "learned" from a review  
6 of the court file that Respondent had failed to appear at status conferences on September 14, 2001  
7 and October 16, 2001 and that the court had issued an OSC re Dismissal. The Court interprets these  
8 admitted facts to mean that Manighalam had not previously been informed of these events by  
9 Respondent. Clearly, Respondent's failure to appear at the status conferences and the court's  
10 subsequent issuance of an OSC re Dismissal were significant developments in the *ASA, Inc. v.*  
11 *Pacific Bell* action. Respondent's failure to notify Manighalam of these developments constitutes  
12 a violation of Business and Professions Code section 6068, subdivision (m).

13       However, the Court does not find Respondent culpable of a violation of section 6068,  
14 subdivision (m) as a result of his alleged failure to promptly respond to Manighalam's status  
15 inquiries. There is insufficient evidence to clearly and convincingly establish that Manighalam  
16 attempted to contact Respondent to inquire about the status of the *ASA, Inc. v. Pacific Bell* action  
17 or that Respondent failed to promptly respond to any inquiries. Manighalam told the court at the  
18 OSC hearing on November 21, 2001, that he had been unable to contact Respondent, but there is no  
19 evidence to establish the nature and extent, if any, of Manighalam's efforts to contact Respondent.  
20 Similarly, while the evidence establishes that Respondent did not respond to Manighalam's  
21 telephone calls and letters on and after November 21, 2001, Manighalam terminated Respondent's  
22 employment on that date. As a result, Manighalam was no longer a client. Moreover, at that point,  
23 Manighalam was not seeking a status report regarding the *ASA, Inc. v. Pacific Bell* action but, rather,  
24 was attempting to recover his documents and records relating to the action. The evidence is simply  
25 insufficient to establish a violation of Business and Professions Code section 6068, subdivision (m)  
26 for Respondent's alleged failure to respond to Manighalam's status inquiries.

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1 to return the documents and records. Respondent's failure to return these records constitutes a wilful  
2 violation of rule 3-700(D)(1) of the Rules of Professional Conduct.

3 **5. Count Ten (Business and Professions Code Section 6068, Subdivision (i))**

4 Respondent is charged in Count Ten of the NDC with a violation of Business and Professions  
5 Code section 6068, subdivision (i). The Court finds, by clear and convincing evidence, that  
6 Respondent is culpable of this violation.

7 Investigator Wolverton sent a letter to Respondent's official membership address on January  
8 23, 2002, asking him to reply in writing to the allegations of misconduct made by Shahram  
9 Manighalam in his complaint to the State Bar. Although the letter was not returned to the State Bar  
10 as undeliverable, Respondent failed to respond to Investigator Wolverton's letter and failed to  
11 otherwise communicate with him regarding the ASA, Inc. matter. The Court finds that Respondent  
12 received Investigator Wolverton's January 23, 2002, letter and concludes that his failure to reply to  
13 that letter constitutes a violation of Business and Professions Code section 6068, subdivision (i).

14 **LEVEL OF DISCIPLINE**

15 **Factors in Mitigation**

16 There are no mitigating factors presented by the record in this proceeding.

17 **Factors in Aggravation**

18 Respondent has a record of prior discipline in one matter. (Standard 1.2(b)(i), Standards for  
19 Attorney Sanctions for Professional Misconduct.) By Decision filed May 7, 2003 in State Bar Court  
20 Case No. 01-O-04689), this Court found Respondent culpable of multiple acts of misconduct in one  
21 client matter and recommended to the Supreme Court that Respondent be suspended from practice  
22 for a period of two years, that execution of the suspension be stayed and that Respondent be actually  
23 suspended for a period of 90 days and until the State Bar Court grants a motion to terminate his  
24 actual suspension pursuant to rule 205 of the Rules of Procedure. Respondent's misconduct in this  
25 prior default proceeding occurred between August and November 2001, and included (a) failure to  
26 competently perform legal services [rule 3-110(A)]; (b) failure to communicate with the client [Bus.

1 & Prof. Code, § 6068, subd. (m)]; (c) improper withdrawal from employment [rule 3-700(A)(2)];  
2 (d) failure to promptly return a client file [rule 3-700(D)(1)]; (e) failure to obey a court order [Bus.  
3 & Prof. Code, § 6103]; (f) engaging in the unauthorized practice of law while suspended for  
4 noncompliance with Mandatory Continuing Legal Education requirements [Bus. & Prof. Code, §§  
5 6068, subd. (a), 6125 & 6126]; (g) commission of an act of dishonesty by holding himself out as  
6 entitled to practice law [Bus. & Prof. Code, § 6106]; and (h) failure to cooperate with the State Bar's  
7 disciplinary investigation [Bus. & Prof. Code, § 6068, subd. (i)].<sup>2</sup>

8         The current misconduct evidences multiple acts of wrongdoing in two separate client matters  
9 as well as Respondent's failure to cooperate with the State Bar's disciplinary investigations of one  
10 of those matters. (Standard 1.2(b)(ii).)

11         Respondent's misconduct significantly harmed his client in the Gover matter. Despite his  
12 failure to perform the legal services for which he was retained, Respondent did not refund any  
13 portion of the \$1,300 in advanced fees paid by Gover. Additionally, because of Respondent's delay  
14 in returning Gover's files and documents to him, Gover was unable to file a timely opening brief on  
15 appeal, resulting in the court of appeals' denial of Gover's extension request and the ultimate  
16 dismissal of his appeal. In the ASA, Inc. matter, Respondent has never returned Manighalam's  
17 records and documents to him. However, no clear and convincing evidence was introduced to  
18 establish that either Manighalam or ASA, Inc. was harmed by Respondent's failure to return these  
19 files and documents. (Standard 1.2(b)(iv).)

20         Respondent demonstrated indifference toward rectification of or atonement for the  
21 consequences of his misconduct. Despite the dismissal of Gover's appeal due to Respondent's  
22 failure to file an opening brief on his behalf, Respondent delayed returning Gover's files and  
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24         <sup>2</sup> Although the Supreme Court has not yet acted upon this Court's disciplinary recommendation  
25 in Respondent's prior proceeding, it may still be considered as a record of prior discipline in this  
26 proceeding. (Rule 216(c), Rules Proc. of State Bar.) However, since Respondent's misconduct in the  
27 prior proceeding is essentially contemporaneous and similar in nature with his misconduct in the current  
28 proceeding, this prior disciplinary record has not affected this Court's disciplinary recommendation in  
the current proceeding.

1 documents to him, thereby preventing him from effectively preparing and filing an opening brief on  
2 his own behalf. Likewise, in the ASA, Inc. matter, after Manighalam terminated Respondent's  
3 employment as a result of his failure to appear at two status conferences and at the OSC hearing,  
4 Respondent ignored Manighalam's repeated requests and demands that Respondent return  
5 Manighalam's files and records to him. (Standard 1.2(b)(v).)

6 **Discussion**

7 The Standards applicable to this proceeding are 2.4(b), 2.6 and 2.10.

8 Standard 2.4(b) provides that culpability of a member of wilfully failing to perform services  
9 in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a  
10 member of wilfully failing to communicate with a client shall result in reproof or suspension  
11 depending upon the extent of the misconduct and the degree of harm to the client. In the present  
12 case, Respondent has been found culpable of failing to perform legal services with competence in  
13 two client matters and of failing to communicate adequately with clients in those matters. The Court  
14 has found that Respondent's misconduct significantly harmed his client in the Gover matter since  
15 the client's appeal was dismissed and Respondent failed to refund any portion of the fees that Gover  
16 had paid.

17 Standard 2.6 provides that culpability of a member of a violation of, among other things,  
18 Business and Professions Code section 6068, shall result in disbarment or suspension depending on  
19 the gravity of the offense or the harm, if any, to the victim. The Court has found Respondent  
20 culpable of failing to cooperate with the State Bar's disciplinary investigation of the ASA, Inc.  
21 matter, a violation of section 6068, subdivision (i). Respondent's failure to cooperate with the State  
22 Bar's disciplinary investigation harmed the administration of justice.

23 Finally, Standard 2.10 provides, in pertinent part, that culpability of a member of a wilful  
24 violation of any Rule of Professional Conduct not specified in the Standards shall result in reproof  
25 or suspension according to the gravity of the offense or the harm, if any, to the victim. In this  
26 proceeding, Respondent has been found culpable of (a) improperly withdrawing from employment  
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1 in two client matters in wilful violation of rule 3-700(A)(2); (b) failing to refund unearned fees in  
2 the Gover matter in wilful violation of rule 3-700(D)(2); and (c) failing to return client files and  
3 papers in the ASA, Inc. matter in violation of rule 3-700(D)(1). The Court finds these failures by  
4 Respondent significantly harmed his clients.

5 The State Bar recommends that Respondent be actually suspended from the practice of law  
6 for a period of one year. In support of its recommendation, the State Bar cites *Lister v. State Bar*  
7 (1990) 51 Cal.3d 1117, *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr.  
8 831, and *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074.

9 In *Lister*, the Supreme Court found the attorney culpable of misconduct in three client  
10 matters. The misconduct included (a) failure to competently perform legal services in two matters;  
11 (b) improper withdrawal from employment in two matters; (c) failure to promptly return client files  
12 in one matter; (d) failure to promptly refund unearned fees in one matter; and (e) failure to deposit  
13 funds in a client trust account, to maintain adequate records of those funds and to render appropriate  
14 accounts in one matter. The attorney had a record of prior discipline in one matter that the Supreme  
15 Court found was minor and remote in time. The Supreme Court actually suspended the attorney for  
16 a period of one year.

17 In *In the Matter of Greenwood*, the Review Department found the respondent attorney  
18 culpable of misconduct in two client matters. In the first client matter, the attorney was found  
19 culpable of failure to competently perform legal services and improper withdrawal from  
20 employment. In the second client matter, the attorney was found culpable of failure to competently  
21 perform legal services, failure to communicate, violation of a court order and failure to promptly  
22 return the client's files and papers. In both client matters, the client's action was dismissed as a  
23 result of the attorney's failure to perform services. The attorney was also found culpable of failing  
24 to cooperate with the State Bar's disciplinary investigations of those client matters. The Review  
25 Department recommended that the attorney be actually suspended for a period of 90 days.

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1 In *Bledsoe*, the Supreme Court found the attorney culpable of failure to perform services,  
2 failure to communicate and improper withdrawal from employment in four client matters. In at least  
3 one of the matters, the client's case was dismissed for lack of prosecution. In another case, the client  
4 was unable to pursue her claim. The attorney was also found to have made misrepresentations to  
5 his clients regarding the status of their matters and, additionally, was found culpable of failure to  
6 cooperate with the State Bar's disciplinary investigation of two of the client matters. The attorney  
7 had no record of prior discipline in about ten years of practice prior to the commencement of his  
8 misconduct but had defaulted in the disciplinary proceeding. The Supreme Court imposed an actual  
9 suspension of two years.

10 Although not cited by the State Bar, the Court has also considered the Supreme Court's  
11 opinion in *King v. State Bar* (1990) 52 Cal.3d 307. In that case, the attorney was found culpable of  
12 failing to competently perform legal services and improper withdrawal from employment in two  
13 client matters. He was also found culpable of failing to promptly return client files and records in  
14 one of the matters. In one of the matters, an \$84,000 default judgment was entered against the client  
15 as a result of the attorney's failure to perform legal services. The attorney had no record of prior  
16 discipline in approximately 14 years of practice prior to the commencement of his misconduct. The  
17 Supreme Court imposed an actual suspension of 90 days.

18 After reviewing the above-referenced cases, the Court concludes that an actual suspension  
19 of six months is warranted. Respondent has engaged in serious misconduct in two client matters,  
20 including failure to competently perform legal services, failure to adequately communicate with  
21 clients, improper withdrawal from employment, failure to return client files and failure to refund  
22 unearned fees. He has also failed to cooperate with a disciplinary investigation.

23 The Court finds that Respondent's misconduct is similar in severity to the misconduct found  
24 in *Greenwood* and *King*. However, unlike *King*, Respondent has a record of prior discipline in one  
25 recent matter. Moreover, Respondent's failure to participate in this proceeding makes it impossible  
26 to determine the cause of his misconduct and the ongoing danger he may pose to the public. On  
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1 balance, the Court concludes that an actual suspension of six months and until the Court grants a  
2 motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure will  
3 adequately protect the public.

4 **RECOMMENDED DISCIPLINE**

5 This Court recommends that Respondent **RICHARD DAVID COMESS** be suspended from  
6 the practice of law for a period of three years, that execution of such suspension be stayed and that  
7 Respondent be actually suspended from the practice of law in the State of California for a period of  
8 six months and until (a) he makes restitution to Ray E. Gover (or to the Client Security Fund, if it  
9 has paid) in the amount of \$1,300, plus ten percent (10%) interest per annum from April 17, 2001,  
10 and provides proof of such restitution to the Office of Probation; and (b) the State Bar Court grants  
11 a motion pursuant to rule 205 of the Rules of Procedure to terminate his actual suspension at the  
12 conclusion of the specified period of actual suspension or upon such later date ordered by the State  
13 Bar Court. The Court also recommends that Respondent be ordered to take and pass the Multistate  
14 Professional Responsibility Examination ("MPRE") administered by the National Conference of Bar  
15 Examiners within one year of the effective date of the Supreme Court's final disciplinary order in  
16 this proceeding or within the period of Respondent's actual suspension, whichever is longer, and that  
17 Respondent provide proof of passage of the MPRE to the Office of Probation within that period.

18 If the period of Respondent's actual suspension exceeds two years, the Court recommends  
19 that Respondent remain actually suspended from the practice of law until he demonstrates to the  
20 satisfaction of the State Bar Court his rehabilitation, present fitness to practice law and present  
21 learning and ability in the general law pursuant to Standard 1.4(c)(ii) of the Standards for Attorney  
22 Sanctions for Professional Misconduct

23 It is also recommended that Respondent be ordered to comply with any probation conditions  
24 that may be hereinafter imposed by the State Bar Court as a condition of terminating Respondent's  
25 actual suspension. (Rule 205(g), Rules Proc. of State Bar.)

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The Court recommends that the Supreme Court order Respondent to comply with rule 955(a) of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in this matter and to file the compliance affidavit required by rule 955(c) within 40 days of the effective date of the Court's order.

**COSTS**

It is further recommended that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and that such costs be made payable in accordance with Business and Professions Code section 6140.7.

Dated: August 18, 2003

  
Alban I. Niles  
Judge of the State Bar Court

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

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 19, 2003, I deposited a true copy of the following document(s):

**DECISION, filed August 19, 2003**

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

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

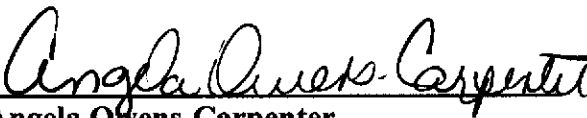
**RICHARD D COMESS  
944 PRINCETON DR  
MARINA DEL REY CA 90292 5411**

**RICHARD D COMESS  
2826 DUNLEER PLACE  
LOS ANGELES CA 90064**

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

**MICHAEL GLASS, ESQ., Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **August 19, 2003**.

  
\_\_\_\_\_  
**Angela Owens-Carpenter**  
Case Administrator  
State Bar Court