


~~CONFIDENTIAL~~

<p>Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL BROOKE A. SCHAFER, No. 194824 1149 South Hill Street, 10th Floor Los Angeles, California 90015-2299 Telephone: (213) 765-1051</p>	<p>Case Number(s) 02-O-13697-RMT 04-N-10379 (Investigation)</p>	<p>(for Court use) ORIGINAL LODGED AUG 27 2004 ^{MDS} STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>FILED JUN 11 2009 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel for Respondent Michael G. Gerner 10100 Santa Monica Bl #800 Los Angeles, CA 90067</p>	<p>PUBLIC MATTER</p> <p>kwiktag * 078 543 692</p> 	
<p>In the Matter of Richard D. Comess</p> <p>Bar # 198665</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>Submitted to Pilot Program Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 9, 1998
 (Date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." This stipulation consists of _____ pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts".
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law."
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§ 6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component (attachment) of this stipulation under specific headings, i.e., "Facts", "Dismissals", "Conclusions of Law."

B. Aggravating Circumstances (Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b).) Facts supporting aggravating circumstances are required.

(1) Prior Record of Discipline [see standard 1.2(f)]

(a) State Bar Court Case # of prior case 01-0-2777

(b) Date prior discipline effective 2-11-04

(c) Rules of Professional Conduct/State Bar Action violations RPC 3-110(A), 3-700(D)(2), 3-700(A)(2); 3-700(D)(1); and Bus. & Prof. Code sec. 6068(m); 6068(l);

(d) Degree of prior discipline 6 months actual suspension; 3 years stayed.

(e) If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline"

(2) Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) Trust violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.

(5) Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(6) Lack of Cooperation: Respondent displayed a lack of candor and cooperation to the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.

(7) Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct.

(8) No aggravating circumstances are involved.

Additional aggravating circumstances:

SEE ATTACHMENT.

C. Mitigating Circumstances [standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3) Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) Restitution: Respondent paid \$ _____ on _____ in restitution to _____ without the threat of force of disciplinary, civil or criminal proceedings.
- (6) Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) Good Faith: Respondent acted in good faith.
- (8) Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) No mitigating circumstances are involved.

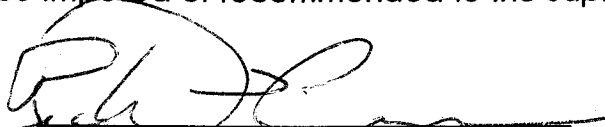
Additional mitigating circumstances:

Respondent enters into this stipulation as a condition of his/her participation in the Pilot Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Pilot Program Contract.

If the Respondent is not accepted into the Pilot Program or does not sign the Pilot Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

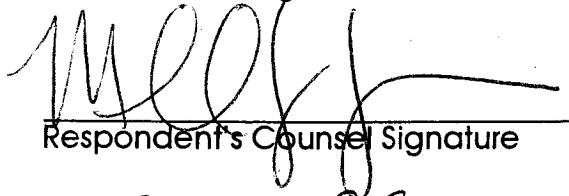
If the Respondent is accepted into the Pilot Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

3/30/04
Date


Respondent's Signature

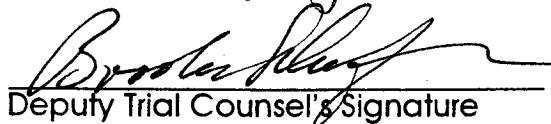
Richard D. Corness
Print Name

3-30-04
Date


Respondent's Counsel Signature

Michael G. Gerner
Print Name

4.01.04
Date


Deputy Trial Counsel's Signature

Brooke A. Schafer
Print Name

**STIPULATED FACTS and CONCLUSIONS OF LAW
STATE BAR COURT PILOT PROGRAM**

**IN THE MATTER OF: RICHARD D. COMESS
 Bar no. 198665**

**CASE NUMBERS: 02-O-13697-RMT
 04-N-10379-RMT (investigation)**

The parties hereby stipulate that the following facts and conclusions of law are true.

JURISDICTION

Respondent was admitted to the practice of law in the State of California on December 9, 1998, and has been a member of the State Bar at all times relevant hereto.

FACTS AND CONCLUSIONS OF LAW

Case no. 02-O-13697 (c/w Terry Rusheen)

1. Effective September 1, 2001, Respondent was suspended from the practice of law as a result of his failure to comply with State Bar Mandatory Continuing Legal Education (MCLE) requirement. Respondent had been properly served with notice in August 2001 of his impending suspension and he had actual knowledge of same.
2. In mid-September 2001 Membership Services Operations of the State Bar sent Respondent another letter informing him that he was suspended from the practice of law and that he would remain suspended until such time that he took the requisite MCLEs. Respondent remained suspended from September 1, 2001, to October 5, 2001, when he was reinstated after taking the required MCLE course.
3. Since 1997 Terry Rusheen had been a defendant in a lawsuit entitled *Niki Han v. Rusheen*, pending in superior court. In 2000 and 2001 Rusheen filed a First Amended Cross-complaint and a Second Amended Cross-complaint, respectively, against certain other individuals and entities.
4. On September 10, 2001, while Respondent was suspended from the practice of law, he met with Rusheen. The two discussed Respondent working for Rusheen to file an opposition to one of the cross-defendant's demurrer and to a motion to strike Rusheen's Second Amended Cross-

complaint. At their meeting Respondent gave Rusheen legal advice and agreed to represent Rusheen in the cross-complaint for a flat fee of \$4000.00. On September 14, 2001, Rusheen gave Respondent \$4000.00. At no time during their meetings on either September 10 or 14, 2001, did Respondent inform Rusheen that he was not entitled to practice law.

5. Respondent signed a substitution of attorney form in Rusheen's case on October 25, 2001, and filed it with the court on November 9, 2001. After late November 2001, Respondent ceased communicating with Rusheen and stopped working on his case.

6. Subsequent to late November 2001, Rusheen attempted to contact Respondent for the purpose of requesting a refund of the \$4000.00 in advanced fees he had paid to Respondent. In April 2002, Robert Henry, an attorney retained by Rusheen to work on his appeal, wrote to Respondent and requested that he refund the \$4000.00 to Rusheen. Although Respondent received Mr. Henry's letter he did not respond in any way. To date Respondent has refunded none of the advanced fees Rusheen paid him.

Conclusions of law – case no. 02-O-13697

– By holding himself out as being entitled to practice law, by accepting legal fees and by otherwise practicing law when he was not an active member of the State Bar, Respondent wilfully violated Business and Professions Code section 6125 and 6126, and thereby failed to support the laws of the State of California as required by Business and Professions Code section 6068(a).

– By misrepresenting to Rusheen that he was entitled to practice law when he was not an active member of the State Bar of California, Respondent committed acts involving dishonesty, in wilful violation of Business and Professions Code section 6106.

– By failing to refund any of the \$4000.00 advanced fee to Rusheen despite not having earned it, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in wilful violation of Rule of Professional Conduct, rule 3-700(D)(2).

Case no. 04-N-10379

7. On November 18, 2003, the California Supreme Court filed an Order in Case No. S118575 (State Bar Court Case No. 01-O-4689) (the "Order") that Respondent be suspended from the practice of law for twenty-four (24) months which included ninety (90) days' actual suspension and until the court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California, among other conditions. Those conditions included the

requirement that Respondent comply with Rule 955 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of Rule 955 within thirty (30) and forty (40) days, respectively, after the effective date of the Order.

8. Rule 955, subdivision (a) required Respondent to notify all clients and any co-counsel of his suspension, deliver to all clients any papers or other property to which the clients are entitled, refund any unearned attorney fees, notify opposing counsel or adverse parties of his suspension, and file a copy of said notice with any court, agency or tribunal before which litigation is pending. Rule 955, subdivision (c) required Respondent to file with the Clerk of the State Bar Court an affidavit showing that he fully complied with the requirements of subdivision (a).

9. On November 18, 2003, the Clerk of the California Supreme Court properly served upon Respondent a copy of the Order, which expressly included the order that he comply with Rule 955 of the California Rules of Court.

10. The Order became effective on December 18, 2003, thirty days after it was entered. Accordingly, pursuant to the terms of the Order, Respondent was to have complied with subdivision (a) of Rule 955 no later than January 17, 2004, and was to have complied with subdivision (c) of Rule 955 no later than January 27, 2004. In other words, Respondent should have filed with the Clerk of the State Bar Court an affidavit showing that he had fully complied with Rule 955 by January 27, 2004.

11. To date, Respondent has failed to comply with Rule 955 of the California Rules of Court. Respondent has failed to file an affidavit with the Clerk of the State Bar Court as required by subdivision (c) of Rule 955 of the California Rules of Court. Respondent failed to timely comply with the provisions of the Order requiring Respondent to comply with Rule 955 of the California Rules of Court.

Conclusion of law - case no. 04-N-10379

- By failing to timely file the statements required by Rule 955, thereby not complying with rule 955 as he was ordered to do on November 18, 2003, Respondent failed to comply with a valid order of court, in wilful violation of Business and Professions Code, section 6103

AGGRAVATING FACTORS, cont'd

Page 2, section B(1), cont'd:

Additional disciplinary case: State Bar Court no. 01-O-4689. Effective date: December 18,

2003. RPC/B&P Code violations: RPC 3-110(A); 3-700(A)(2); 3-700(D)(1); B& P Code 6068(m); 6103; 6125; 6126; 6068(a); 6106; 6068(i). Degree of Discipline: 90 days actual; 2 years stayed.

MITIGATING FACTORS, cont'd

Lawyer Assistance Program participation

Respondent signed an agreement to be evaluated through the State Bar's Lawyer Assistance Program (LAP) on _____. Respondent complied with the LAP's conditions and requests for evaluation. At the conclusion of the LAP evaluation, on _____, Respondent met with the LAP's Evaluation Committee, and then entered into a long-term participation agreement with LAP on _____.

RESTITUTION CONDITIONS and EXPRESS WAIVERS

As a condition of his Pilot Program compliance in this matter, Respondent shall pay restitution to the following persons (and/or the Client Security Fund, if appropriate) in the following amounts plus 10 percent interest per annum accruing from the dates indicated. To the extent Respondent has paid any restitution prior to the effective date of the order arising from this stipulation he shall be given credit for such payments provided satisfactory proof is shown to the Probation Unit of the State Bar.

1. Because he accepted fees while he was not entitled to practice law Respondent shall disgorge the entire fee whether work was performed or not. Accordingly, as a condition of his Pilot Program participation Respondent shall pay Terry Rusheen \$4000.00 plus interest from January 1, 2002.

● **By entering into this stipulation Respondent expressly waives any objection to immediate payment by the State Bar's Client Security Fund upon a claim(s) for the principal amounts of restitution set forth above.**

● **In addition, by entering into this stipulation Respondent waives any objections related to the State Bar's (including OCTC, Client Security Fund or State Bar Court) notification to the above party regarding the amounts due to them under this restitution schedule (whether principal or interest), or regarding assistance in obtaining restitution or payment from the Client Security Fund or from Respondent, at any time after Respondent's admission to the Pilot Program. Respondent expressly waives confidentiality for purposes of effectuating this section re: restitution, has reviewed Rule of Procedure, rule 805 and has had opportunity to consult with counsel prior to this waiver(s).**

DISMISSALS

The parties respectfully request that the court dismiss the following charges in the interests of justice:

Case no. 02-O-13697

Count Four – failure to update membership address

Count Five – failure to cooperate in State Bar investigation

COMPLIANCE WITH COURT ORDERS

As a condition of probation, Respondent agrees to comply with all orders, whether pre-existing or arising during probation, including orders to pay sanctions, attorneys fees or costs awarded against him personally or jointly, including without limitation:

California Supreme Court Order S118575, which is the subject of case no. 04-N-10379.

Among other things Respondent agrees to comply with rule 955, albeit late, within 30 days of signing his Pilot Program contract. Respondent understands this requirement and expressly waives any other notice.

PENDING PROCEEDINGS

The written disclosure referred to on page 1, section A(6), was provided on February 10, 2004.

////////// END OF ATTACHMENT

ORDER

Finding this stipulation to be fair to the parties, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Pilot Program or does not sign the Pilot Program Contract. (See rules 135(b) and 802(b), Rules of Procedure.)

The effective date of the disposition is the effective date of the Supreme Court order herein, normally 30 days after the file date of the Supreme Court Order. (See rule 953(a), California Rules of Court.)

8/27/04

Date



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 September 14, 2004, I deposited a true copy of the following document(s):

DECISION RE ALTERNATIVE RECOMMENDATIONS FOR DEGREE OF DISCIPLINE;

STIPULATION RE: FACTS AND CONCLUSIONS OF LAW;

CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR COURT'S PILOT PROGRAM FOR RESPONDENT'S WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES, lodged August 27, 2004.

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


- 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
ATTORNEY AT LAW
821 3RD ST #204
SANTA MONICA, CA 90403**

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

Brooke Schafer, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 14, 2004


Milagro del R. Salmeron
Case Administrator
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 of California. 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 January 12, 2010, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING CERTAIN DOCUMENTS and
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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

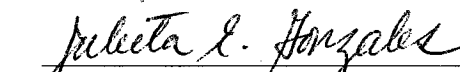
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

RICHARD D COMESS ESQ
1121 TERESITA CIR
MONROVIA, CA 91016

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

Charles A. Murray, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 12, 2010.



Julieta E. Gonzales
Case Administrator
State Bar Court