

**State Bar Court of California**  
**Hearing Department**  
**San Francisco**

<p>Counsel For The State Bar</p> <p><b>Esther J. Rogers</b> Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2445</p> <p>Bar # <b>148246</b></p>	<p>Case Number (s) <b>06-O-11505</b></p>	<p>(for Court's use)</p> <p style="text-align: center;"><b>PUBLIC MATTER</b></p> <p style="text-align: center;"><b>FILED</b> </p> <p style="text-align: center;">APR 25 2007</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p><b>Owen T. Mascott</b> P O Box 5436 Walnut Creek, CA 94596 (925)516-8967</p> <p>Bar # <b>134243</b></p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: <b>Owen T. Mascott</b></p> <p>Bar # <b>134243</b></p> <p>A Member of the State Bar of California (Respondent)</p>		

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **June 17, 1988**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (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." The stipulation consists of **8** pages, not including the order.
- (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) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."



(Do not write above this line.)

- (7) 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.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- costs added to membership fee for calendar year following effective date of discipline.
  - costs to be paid in equal amounts prior to February 1 for the following membership years:  
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - costs entirely waived

**B. Aggravating Circumstances [for definition, see 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 **See attached**
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "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 victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances**

**C. Mitigating Circumstances [see 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 with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. **See attached.**
- (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 or 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 was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug 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**

**D. Discipline:**

- (1)  **Stayed Suspension:**

- (a)  Respondent must be suspended from the practice of law for a period of **six (6) months**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
  - ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
  - iii.  and until Respondent does the following:

The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent is placed on probation for a period of **one (1) year**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

**E. Additional Conditions of Probation:**

- (1)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (3)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (4)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (5)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (6)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are

directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

- (7)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2)  **Other Conditions:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Owen T. Mascott

CASE NUMBER(S): 06-O-11505

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct:

**Count One**

Statement of Facts

Prior to March 2005, Lance Seymour was the president of Meridian Associates, an entity that hosts, designs, markets and maintains websites. Prior to March 2005, Wesley Rinella hired Meridian to provide website development and maintenance services. After a dispute arose between Meridian and Rinella, Meridian referred Rinella's account to collection agency The National Collection Agency. The amount in dispute was \$2,568.

On or about March 3, 2005, Seymour caused a lawsuit to be filed against Wesley Rinella for breach of contract in the matter *The National Collection Agency vs. Rinella*, Santa Clara County Superior Court, Case number 1-05-CV-036660. On or about September 9, 2005, Seymour employed respondent to represent him in the matter. At the time Seymour employed respondent, the case was set for trial on October 11, 2005. After reviewing the case, respondent stated to Seymour that the case would only take 15 minutes to be heard and that respondent would charge Seymour \$247 for the representation. On or about September 9, 2005, Seymour paid respondent \$247.

On October 5, 2005, respondent filed a Transfer of Plaintiff's Interest informing the court that Meridian Associates was replacing The National Collection Agency as plaintiff. On October 11, 2005, all parties appeared for the trial. After hearing several hours of testimony, the court ruled in defendant's favor and order Seymour to pay Rinella's attorney fees.

On November 1, 2005, Rinella served respondent with a Notice of Motion and Motion for Attorney's Fees, which requested \$6,757.50 in attorney's fees. The hearing was noticed for November 29, 2005. On or about November 1, 2005, respondent faxed a letter to Seymour

stating respondent received Rinella's attorney's "extremely overblown" motion for attorney's fees. The letter also stated that respondent felt "sort-changed" because he was only paid for one and one-half hours of his time and that he "does not want to be counsel for Meridian any longer." The letter concluded by stating that Seymour had 18 days to file an opposition to the motion for attorney's fees. By his November 1, 2005 letter, respondent withdrew from representation. Thereafter, respondent failed to perform any further services for Seymour.

Soon after November 1, 2005, Seymour attempted to find new counsel to oppose the motion for attorney's fees. However, due to the short notice, Seymour was unable to find new counsel to oppose the motion. Seymour was not able to file an opposition himself because corporations must be represented by a lawyer in California courts and Meridian was a corporation. On November 17, 2005, Rinella filed a notice of non-opposition to the Motion for Attorney's Fees and soon thereafter Seymour paid \$5,000 in satisfaction of the attorney's fees.

Respondent was required to obtain permission to withdraw as counsel from the Santa Clara County Superior Court, pursuant to California Code of Civil Procedure section 284(2) and California Rule of Court, rule 376, or to obtain a substitution of counsel from Seymour. Respondent failed to seek or receive permission from the Santa Clara County Superior Court to withdraw as counsel and failed to obtain a substitution of counsel. According to the court file, respondent still remains as counsel of record to Meridian.

#### Conclusions of Law

By failing to obtain the permission of the Santa Clara County Superior Court, respondent withdrew from representation in a proceeding before a tribunal without its permission, in wilful violation of Rules of Professional Conduct, Rule 3-700(A)(1).

#### **AGGRAVATING CIRCUMSTANCES**

Prior Record of Discipline. Standard 1.2(b)(i). Effective August 10, 1994, respondent was publicly reprimanded in State Bar Case number 94-O-15943 for making misleading statements to a court in violation of Rules of Professional Conduct, rule 5-200(B) and Business and Professions Code section 6068(b).

#### **MITIGATING CIRCUMSTANCES**

Cooperation. Standard 1.2(e)(v). Respondent cooperated with the State Bar's investigation and agreed to the imposition of discipline without requiring a hearing.

#### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(7), was March 28, 2007.

(Do not write above this line.)

In the Matter of Owen T. Mascott	Case number(s): 06-O-11505
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**SIGNATURE OF THE PARTIES**

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

4/5/07  
Date

4/5/07  
Date

4/11/07  
Date

Owen T. Mascott  
Respondent's Signature

Owen T. Mascott  
Respondent's Counsel Signature

Esther Rogers  
Deputy Trial Counsel's Signature

Owen T. Mascott  
Print Name

Owen T. Mascott - pro per  
Print Name

Esther J. Rogers  
Print Name



(Do not write above this line.)

In the Matter Of	Case Number(s):
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**ORDER**

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

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

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; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

4-24-07 \_\_\_\_\_  
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 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 San Francisco, on April 25, 2007, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING**

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

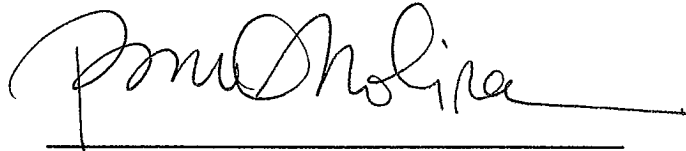
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**OWEN T. MASCOTT  
P O BOX 5436  
WALNUT CREEK, CA 94596**

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

**ESTHER ROGERS, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **April 25, 2007**.



**Bernadette C. O. Molina**  
Case Administrator  
State Bar Court