

PUBLIC MATTER

1 STATE BAR OF CALIFORNIA
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JUN 15 2011
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

10 STATE BAR COURT

11 HEARING DEPARTMENT - LOS ANGELES

13 In the Matter of:) Case No. 09-O-19235
14 COLIN C. SWAINSTON,)
No. 150761,) NOTICE OF DISCIPLINARY CHARGES
15)
16 A Member of the State Bar)

17 **NOTICE - FAILURE TO RESPOND!**

18 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE**
19 **WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT**
20 **THE STATE BAR COURT TRIAL:**

- 21 (1) **YOUR DEFAULT WILL BE ENTERED;**
- 22 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**
23 **WILL NOT BE PERMITTED TO PRACTICE LAW;**
- 24 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**
25 **THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION**
26 **AND THE DEFAULT IS SET ASIDE, AND;**
- 27 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
28 **SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE**
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.



1 The State Bar of California alleges:

2 **JURISDICTION**

3 1. Colin C. Swainston ("Respondent") was admitted to the practice of law in the
4 State of California on December 4, 1990, was a member at all times pertinent to these charges,
5 and is currently a member of the State Bar of California.

6 **COUNT 1**

7 Case No. 09-O-19235
8 Rules of Professional Conduct, rule 3-110(A)
9 [Failure to Perform with Competence]

10 2. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by
11 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as
12 follows:

13 3. On or about July 14, 2009, Gary Leiss employed Respondent to represent him in a
14 civil matter arising from Leiss's sale of his commercial real property, and paid Respondent
15 advanced fees in the sum of \$5,000. Respondent's services were to include the filing of a civil
16 complaint against Leiss's real estate broker if a settlement did not follow Respondent's demand
17 letter to the broker.

18 4. From the date he was employed until on or about January 29, 2010, Respondent
19 never sent a demand letter to Leiss's real estate broker, never met with Leiss to discuss his case,
20 never provided Leiss an analysis of his legal position, and never provided legal services of any
21 value to Leiss.

22 5. On or about January 29, 2010, Leiss sent Respondent a letter, which he received,
23 in which Leiss described the complete lack of substantive communication from Respondent
24 following Respondent's deposit of Leiss's advanced fees. In that letter, Leiss demanded that
25 Respondent refund his advanced fee so that Leiss may employ a different lawyer for his matter.
26 Respondent did not respond to Leiss's letter.

27 6. By not sending a demand letter to Leiss's real estate broker, not meeting with
28 Leiss to discuss his case, and not providing Leiss an analysis of his legal position, Respondent
intentionally, recklessly, or repeatedly failed to perform legal services with competence.

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NOTICE - INACTIVE ENROLLMENT!

YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.

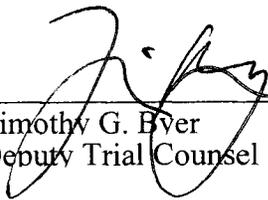
NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: June 15, 2011

By: 
Timothy G. Ever
Deputy Trial Counsel

