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STATE BAR OF CALIFORNIA
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PUBLIC MATTER

FILED

SEP 06 2011

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES

In the Matter of:)	Case No.	10-O-05923
)		10-O-07529
COLIN C. SWAINSTON,)		10-O-07809
No. 150761,)		11-O-10865
)		
)	NOTICE OF DISCIPLINARY CHARGES	
A Member of the State Bar)		

NOTICE - FAILURE TO RESPOND!

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

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE, AND;**
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE. 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.**

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1 The State Bar of California alleges:

2 JURISDICTION

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

6 COUNT ONE

7 Case No. 10-O-05923
8 Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

9 2. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3), by
10 failing to render appropriate accounts to a client regarding all funds coming into Respondent's
11 possession, as follows:

12 3. On or about October 1, 2007, Jose Diaz ("Diaz") employed Respondent at an hourly
13 rate to defend him in a lawsuit in the Los Angeles Superior Court, case no. VC047881 (the "Diaz
14 Case"). Diaz paid Respondent a total of \$17,000: \$5,000 for advanced legal fees, \$7,000 in costs
15 for a mandatory arbitration requested by Respondent, and \$5,000 in costs for depositions.

16 4. On or about December 18, 2008, the superior court dismissed the Diaz Case.

17 5. On or about May 4, 2009, Diaz sent a fax to Respondent requesting an accounting for
18 the fees paid by Diaz to Respondent.

19 6. On or about May 11, 2009, Diaz mailed a letter to Respondent asking for a refund of
20 the unused fees Diaz had paid to Respondent. Respondent received the letter.

21 7. On or about July 2, 2009, Respondent refunded \$5,000 to Diaz for the depositions,
22 which were never held.

23 8. On or about, July 14, 2009, Diaz mailed a letter to Respondent requesting an
24 accounting for the fees he had paid to Respondent. Respondent received the letter.

25 9. On or about July 20, 2009, Attorney Armando Galvan mailed a letter to Respondent
26 on behalf of Diaz requesting an accounting for the fees paid by Diaz to Respondent, and a refund
27 of any unused fees. Respondent received the letter.

28 10. Respondent never provided Diaz with an accounting for the advanced fees.

1 11. By failing to provide an accounting of the fees paid by Diaz after the court dismissed
2 the Diaz Case, Respondent failed to render appropriate accounts to a client regarding all funds
3 coming into Respondent's possession.

4 COUNT TWO

5 Case No. 10-O-05923
6 Rules of Professional Conduct, rule 3-700(D)(2)
7 [Failure to Refund Unearned Fees]

8 12. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by
9 failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

10 13. The allegations of Count One are incorporated by reference.

11 14. On or about September 29, 2009, Diaz filed a lawsuit against Plaintiff in small claims
12 court, case no. 30-2009-00307048-SC-SC-WJC (the "Small Claims Suit") to recover the \$7,000
13 Respondent owed him from the arbitration, which was never held.

14 15. On or about January 21, 2010, Diaz and Respondent filed a stipulation for entry of
15 judgment in the Small Claims Suit whereby Respondent would pay Diaz \$4,000 by April 15,
16 2010. Respondent never paid Diaz the \$4,000.

17 16. By failing to pay Diaz at least \$4,000 in unearned fees and costs, Respondent failed to
18 refund promptly any part of a fee paid in advance that has not been earned.

19 COUNT THREE

20 Case No. 10-O-05923
21 Business and Professions Code, section 6068(i)
22 [Failure to Cooperate in State Bar Investigation]

23 17. Respondent wilfully violated Business and Professions Code, section 6068(i), by
24 failing to cooperate and participate in a disciplinary investigation pending against Respondent, as
25 follows:

26 18. On or about April 26, 2010, Diaz submitted a complaint regarding Respondent to the
27 State Bar.

28 19. On or about January 6, 2011, a State Bar investigator mailed a letter to Respondent
requesting a response to allegations raised by Diaz's complaint. Respondent received the letter.

1 38. By failing to respond to Guerrero's requests for information on the status of her case,
2 including the fact that the court had dismissed her case, Respondent failed to keep a client
3 reasonably informed of significant developments and respond promptly to reasonable status
4 inquiries of a client in a matter in which Respondent had agreed to provide legal services.

5 COUNT SIX

6 Case No. 10-O-07529
7 Rules of Professional Conduct, rule 4-100(B)(3)
8 [Failure to Render Accounts of Client Funds]

9 39. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3), by
10 failing to render appropriate accounts to a client regarding all funds coming into Respondent's
11 possession, as follows:

12 40. The allegations of Counts Four and Five are incorporated by reference.

13 41. Numerous times, including on or about October 16, 2009, and on or about November
14 30, 2009, Guerrero requested an accounting and refund of the \$5,000 in advanced fees.

15 42. Respondent never provided Guerrero an accounting.

16 43. By failing to provide Guerrero with an accounting at her request, and when he
17 withdrew from her case, Respondent failed to render appropriate accounts to a client regarding
18 all funds coming into Respondent's possession.

19 COUNT SEVEN

20 Case No. 10-O-07529
21 Rules of Professional Conduct, rule 3-700(D)(2)
22 [Failure to Refund Unearned Fees]

23 44. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by
24 failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

25 45. The allegations of Counts Four, Five, and Six are incorporated by reference.

26 46. Respondent never performed any work of value on Guerrero's behalf. Respondent
27 never earned any of the \$5,000 in advanced fees paid by Guerrero. Respondent never refunded
28 any of the \$5,000 in advanced fees paid by Guerrero.

47. By failing to refund the \$5,000 in unearned advanced fees, Respondent failed to
refund promptly any part of a fee paid in advance that has not been earned.

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COUNT NINE

Case No. 10-O-07899
Rules of Professional Conduct, rule 4-100(B)(4)
[Failure to Pay Client Funds Promptly]

56. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(4), by failing to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive, as follows:

57. On or about February 15, 2008, Dr. Drew Fenton employed Respondent to handle a property matter. Dr. Fenton gave Respondent a \$25,000 check, which Dr. Fenton had received from liquidating an individual retirement account, with the understanding that Respondent would use up to \$10,000 as advanced legal fees and would return \$15,000 to Dr. Fenton.

58. Respondent negotiated Dr. Fenton's \$25,000 check and kept all of the money.

59. Dr. Fenton contacted Respondent numerous times requesting the \$15,000 balance.

60. Respondent never paid any of the \$15,000 balance to Dr. Fenton.

61. By failing to give Dr. Fenton the \$15,000 balance from the check as agreed, Respondent, failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive.

COUNT TEN

Case No. 10-O-07809
Business and Professions Code, section 6106
[Moral Turpitude-Misappropriation]

62. Respondent wilfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:

63. The allegations of Count Nine are incorporated by reference.

64. Respondent kept \$15,000 as an earned fee without Dr. Fenton's consent.

65. Dr. Fenton made numerous requests for the \$15,000 balance from the \$25,000 check, and Respondent refused to give Dr. Fenton the \$15,000.

66. By taking \$15,000 of Dr. Fenton's funds without Dr. Fenton's consent, Respondent committed an act involving moral turpitude, dishonesty, or corruption.

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1 appeal, Respondent failed to respond promptly to reasonable status inquiries of a client in a
2 matter in which Respondent had agreed to provide legal services.

3 COUNT THIRTEEN

4 Case No. 11-O-10865
5 Rules of Professional Conduct, rule 3-110(A)
6 [Failure to Perform with Competence]

7 85. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by
8 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as
9 follows:

10 86. The allegations of Count Twelve are incorporated by reference.

11 87. Respondent did not appear in court for the Torrijos Appeal. On or about March 10,
12 2011, the court dismissed the Torrijos Appeal because Respondent failed to appear.

13 88. By failing to communicate with Torrijos regarding the Torrijos Appeal, and failing to
14 appear in court for the Torrijos Appeal, Respondent intentionally, recklessly, or repeatedly failed
15 to perform legal services with competence.

16 COUNT FOURTEEN

17 Case No. 11-O-10865
18 Rules of Professional Conduct, rule 3-700(D)(2)
19 [Failure to Refund Unearned Fees]

20 89. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by
21 failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

22 90. The allegations of Counta Twelve and Thirteen are incorporated by reference.

23 91. Respondent never performed any work of value on Torrijos behalf. Respondent
24 never earned any of the \$1,500 in advanced fees paid to him by Torrijos. Respondent never
25 refunded any of the \$1,500 in advanced fees paid by Torrijos.

26 92. By failing to refund the \$1,500 in unearned advanced fees to Torrijos, Respondent
27 failed to refund promptly any part of a fee paid in advance that has not been earned.

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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: September 6, 2011

By: _____
Robert J. Melone
Acting Deputy Trial Counsel

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DECLARATION OF SERVICE BY CERTIFIED MAIL

CASE NUMBERS: 10-O-05923, 10-O-07529, 10-O-07809, 11-O-10865

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on the date shown below, a true copy of the within

NOTICE OF DISCIPLINARY CHARGES

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 7160 3901 9848 5951 7029, at Los Angeles, on the date shown below, addressed to:

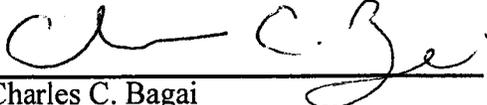
**Colin C Swainston
Law Office of Colin C Swainston
4911 Warner Ave Ste 218
Huntington Beach, CA 92649**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: September 6, 2011

Signed: 
Charles C. Bagai
Declarant