

PUBLIC MATTER

FILED

DEC 06 2011

**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

1 STATE BAR OF CALIFORNIA
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STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

13 In the Matter of:) Case No. 11-O-15324
 14 COLIN C. SWAINSTON,)
 15 No. 150761,) NOTICE OF DISCIPLINARY CHARGES
 16 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.



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 ONE

7 Case No. 11-O-15324
8 Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

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

12 3. In or about February 2011, two brothers, Camille and Samuel Bernardeau employed
13 Respondent to represent their interests, as co-executors and heirs of an estate, in a probate matter
14 (the Bernardeau Probate) and paid him an advance fee of \$2,500.

15 4. On or about April 6, 2011, Respondent formally substituted as counsel for the
16 Bernardeaus in the Bernardeau Probate.

17 5. On or about April 7, 2011, attorney Walter Olson specially appeared, on a contractual
18 basis, on Respondent's behalf for a hearing in the Bernardeau Probate. The court ordered
19 Respondent to clear the case notes and documents no later than five days before the next hearing,
20 which was then scheduled for May 19, 2011. Respondent received notice of the order requiring
21 him to clear the case notes and documents.

22 6. On or about May 19, 2011, Respondent failed to appear for the hearing set in the
23 Bernardeau Probate. The court issued an Order to Show Cause as to why sanctions should not be
24 imposed against Respondent for failing to clear the case notes. The court continued the May 19
25 hearing to June 30, 2011. The court served Respondent with, and he received, the OSC.

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COUNT THREE

Case No. 11-O-15324
Business and Professions Code, section 6068(o)(3)
[Failure to Report Judicial Sanctions]

14. Respondent wilfully violated Business and Professions Code, section 6068(o)(3), by failing to report to the agency charged with attorney discipline, in writing, within 30 days of the time Respondent had knowledge of the imposition of any judicial sanctions against Respondent, as follows:

15. The allegations of Counts One and Two are incorporated by reference.

16. By not reporting the imposition of the \$1,000 in sanctions to the State Bar of California, Respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time Respondent had knowledge of the imposition of any judicial sanctions against Respondent.

COUNT FOUR

Case No. 11-O-15324
Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]

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

18. The allegations of Counts One through Three are incorporated by reference.

19. On or about August 19, 2011, a State Bar investigator sent a letter to Respondent, requesting his response to the allegations described in this NDC by September 2, 2011. On September 13, 2011, a State Bar investigator sent a second letter to Respondent, again requesting his response to the allegations herein. Respondent received both letters, but did not thereafter respond to the State Bar investigator.

20. By not responding to the investigator's letters of August 19, 2011, and September 13, 2011, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent.

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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.

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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.

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Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

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DATED: December 6, 2011

By: _____


PAUL T. O'BRIEN
Supervising Trial Counsel

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DECLARATION OF SERVICE BY CERTIFIED MAIL

CASE NUMBER: 11-O-15324

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.: 7196 9008 9111 0443 3208, at Los Angeles, on the date shown below, addressed to:

**Colin C. Swainston
4911 Warner Avenue, Suite 218
Huntington Beach, CA 92649**

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: December 6, 2011

Signed: *Paula Heider*
Paula Heider
Declarant