

SUPREME COURT OF PENNSYLVANIA

In re Bohmueller

46 Pa. D. & C. 5th 449 (Pa. 2015) · Decided January 23, 2015

SUMMARY

This Pennsylvania disciplinary matter concerns Barry O. Bohmueller's participation in an estate-planning business that marketed living trusts through nonlawyers. The findings address unauthorized practice of law, inadequate client communication, undisclosed fee sharing and conflicts, misleading advertising, and omissions from attorney registration forms. The Disciplinary Board adjudicated the matter on January 15, 2014, following a hearing committee recommendation of a two-year suspension.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Per Curiam; Chief Justice Saylor; Justice Todd; Justice Stevens; Justice Eakin; Justice Baer
JURISDICTION	Pennsylvania
DECIDED	January 23, 2015
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding initiated by the Office of Disciplinary Counsel and submitted by the Disciplinary Board of the Supreme Court of Pennsylvania for final disposition.
STANDARD OF REVIEW	The Office of Disciplinary Counsel bore the burden of proving misconduct by clear and satisfactory evidence, described in the opinion as a preponderance-of-the-evidence burden.
PRECEDENTIAL VALUE	published disciplinary decision
PARTIES	Office of Disciplinary Counsel v. Barry O. Bohmueller

TOPICS

[trusts](#) [estate planning](#) [power of attorney](#)

PRACTICE AREAS

[legal ethics and attorney discipline](#) [estate planning](#) [trusts](#)

QUESTIONS PRESENTED

1. Whether the evidence established that Bohmueller assisted nonlawyers in the unauthorized practice of law.
2. Whether Bohmueller violated professional-conduct rules by failing to communicate with and advise clients adequately and by permitting nonlawyers to counsel clients concerning estate-planning documents.
3. Whether Bohmueller violated rules governing fee sharing, conflicts of interest, supervision, nonlegal services, and dishonesty.
4. Whether the totality of the misconduct warranted disbarment rather than the hearing committee's recommended two-year suspension.

HOLDINGS

1. Bohmueller violated the Rules of Professional Conduct by assisting nonlawyers in practicing law through a living-trust marketing and delivery scheme in which nonlawyers solicited clients, provided legal advice, gathered estate-planning information, and explained legal documents without adequate attorney supervision.
2. Bohmueller violated Rules 1.2(a) and 1.4(b) by failing to communicate with clients about their representation and estate-planning objectives and by allowing nonlawyers to provide advice and explanations that he was required to provide.
3. Bohmueller violated the professional-conduct rules by sharing fees without client disclosure, permitting conflicts arising from his financial interests, assisting and ratifying misconduct by others, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and omitting two IOLTA accounts from annual attorney-registration forms.
4. Disbarment was warranted because Bohmueller engaged in an egregious, four-year pattern of assisting the unauthorized practice of law, misleading and failing to advise predominantly elderly clients, improperly sharing fees, misrepresenting his practice, concealing IOLTA accounts, and showing no remorse.

KEY QUOTATIONS

“the board concludes that petitioner proved that respondent, acting in concert with attorney Brett Weinstein, participated in a living trust scheme in which he assisted nonlawyers in the unauthorized practice of law, conducted his practice in a dishonest manner, placed his own economic interests above those of his clients, and failed to give clients the required advice and counsel to which they were entitled.” (at 473)

“Respondent’s misconduct is egregious and warrants a severe sanction.” (at 480)

“respondent, Barry O. Bohmueller, be disbarred from the practice of law” (at 480)

FACTUAL BACKGROUND

BohmueLLer operated an estate-planning practice in association with nonlawyer businesses that marketed living trusts to senior citizens. Nonlawyer agents solicited clients, gathered testamentary and asset information, advised clients about trusts, delivered and explained legal documents, and promoted annuities, while BohmueLLer had little or no direct contact with many clients and did not supervise the agents. He shared fees with attorney Brett Weinstein without informing clients, permitted Weinstein access to his IOLTA accounts, omitted two of four IOLTA accounts from annual registration forms, and used advertising that the disciplinary board found false or misleading.

PROCEDURAL HISTORY

The Office of Disciplinary Counsel filed a petition for discipline on April 8, 2011, alleging that Barry O. BohmueLLer assisted nonlawyers in the unauthorized practice of law, failed to communicate adequately with clients, failed to disclose fee sharing and conflicts, and engaged in dishonest conduct involving his attorney registration forms and IOLTA accounts. After multiple evidentiary hearings, the hearing committee recommended a two-year suspension. No briefs on exception were filed. The Disciplinary Board unanimously recommended disbarment, and the Supreme Court ordered disbarment and payment of costs on January 23, 2015.

DISPOSITION

other

CASES CITED

- Office of Disciplinary Counsel v. Surrick, 749 A.2d 441 (Pa. 2000)
- Cincinnati Bar Association v. Kathman, 92 Ohio St. 3d 82 (Ohio 2001)
- In re Mid-America Living Trust Associates, Inc. v. et al., 927 S.W. 2d 855 (Mo. 1996)
- People of the State of Colorado v. Michael M. Laden, 893 P.2d 771 (Colo. 1995)
- In re Disciplinary Proceeding Against Shepard, 169 Wash. 697 (Wash. 2010)
- Office of Disciplinary Counsel v. Anonymous (G. Jeffrey Moeller), 53 DB 2000 (Pa. 2002)
- Office of Disciplinary Counsel v. Peter William DiGiovanni, No. 36 DB 2008 (Pa. 2009)
- Office of Disciplinary Counsel v. Sharon Goldin-Didinsky, No. 87 DB 2003 (Pa. 2004)
- Office of Disciplinary Counsel v. Jeffry Pearson, No. 88 DB 2008 (Pa. 2011)
- Office of Disciplinary Counsel v. Stern, 526 A.2d 1180 (Pa. 1987)