

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2038 Disciplinary Docket No. 3
Petitioner :
 : No. 54 DB 2011
v. :
 : Attorney Registration No. 78665
BRETT B. WEINSTEIN, :
Respondent : (Montgomery County)

ORDER

PER CURIAM:

AND NOW, this 28th day of July, 2014, upon consideration of the Report and Recommendations of the Disciplinary Board dated March 3, 2014, the Petition for Review and response thereto, it is hereby

ORDERED that Brett B. Weinstein is disbarred from the Bar of this Commonwealth, and he shall comply with all the provisions of Rule 217, Pa. R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa. R.D.E.

A True Copy Patricia Nicola
As Of 7/28/2014

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 54 DB 2011
Petitioner	:	
	:	
v.	:	Attorney Registration No. 78665
	:	
BRETT B. WEINSTEIN	:	
Respondent	:	(Montgomery County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On April 8, 2011, Office of Disciplinary Counsel filed a Petition for Discipline against Respondent, Brett B. Weinstein, at No. 54 DB 2011. The Petition alleged that Respondent participated in the unauthorized practice of law by allowing laypersons to counsel his clients; he failed to communicate properly with his clients concerning their individual estate planning; he failed to inform clients of fee sharing or of his conflicts of interest; and he generally engaged in conduct involving dishonesty, fraud, deceit and misrepresentation. Respondent filed an Answer to Petition on May 23, 2011.

Simultaneous to the filing of the instant Petition, Petitioner filed a factually-related Petition against Barry O. Bohmueller, another member of the Pennsylvania Bar, alleging that he acted in cooperation with Respondent. The cases were consolidated for disciplinary hearing. Separate Hearing Committee Reports were filed.

Following a pre-hearing conference on August 19, 2011, hearings were held before a District II Hearing Committee comprised of Chair Michael J. Malloy, Esquire and Members Mason Avrigian, Sr., Esquire, and Philip M. Hof, Esquire. The hearings took place on December 7 and December 8, 2011, March 7 and March 8, 2012, and July 24 and July 26, 2012. The record was supplemented by deposition testimony on July 9, 2012 and September 19, 2012. Closing arguments were held on December 18, 2012. Following the Hearing Committee's determination that Petitioner had established a *prima facie* violation of at least one Rule of Professional Conduct, a dispositional hearing was held on March 27, 2013.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on August 1, 2013 and recommended that Respondent be disbarred from the practice of law.

Respondent filed a Brief on Exceptions on October 2, 2013 and requested oral argument before the Board.

Petitioner filed a Brief Opposing Exceptions on October 18, 2013.

Oral argument was held before a three-member panel of the Disciplinary Board on December 6, 2013.¹

¹ On October 2, 2013, Respondent moved to disqualify Hearing Committee Member Mason Avrigian, Sr., Esquire which motion the Board denied, considering that it had been made more than two years after commencement of the proceedings. On November 15, 2013, Respondent moved to open the record in order to supplement it with a letter indicating Petitioner's interest in compromising the matter and considering suspension as a sanction. The Board granted the Motion to Supplement.

This matter was adjudicated by the Disciplinary Board at the meeting on January 15, 2014.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent is Brett B. Weinstein. He was born in 1968 and was admitted to practice law in the Commonwealth in 1996. He maintains his office at 705 West DeKalb Pike, King of Prussia, PA 19406, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of discipline in Pennsylvania.

4. In 1999 or 2000, Respondent was associated with an estate planning business known as ALMS, drafting trusts that had been sold to senior citizens by nonlawyers. (N.T. 3/7/12 at 7-8, 16-17; 7/26/12 at 199-200)

5. On April 18, 2000, Petitioner issued DB-7 Requests to Respondent regarding clients' complaints. (ODC -190)

6. Respondent responded on August 27, 2000.

7. On February 16, 2001, Petitioner issued a letter of concern regarding Respondent's responses to the DB-7 Requests. (ODC-127)

8. In 2001, Respondent signed an Assurance of Voluntary Compliance with the Attorney General of Pennsylvania ("AVC"), agreeing to refrain from such conduct in the future. (ODC-128)

9. On May 3, 2002, Petitioner gave notice to Respondent by letter that Petitioner had dismissed a complaint by the Allegheny County Bar Association in relation to an AVC with the Office of Attorney General. (ODC-129)

10. Respondent signed an Interim Consent Decree dated December 14, 2004, in the case of Commonwealth of Pennsylvania v. Estate Planning Advisors, Brett B. Weinstein and Barry O. Bohmueller, et al., No. 74 MD 2004 (Pa. Cmwlth.), which states, *inter alia*, that "Defendant Weinstein will continue to refrain from authorizing and utilizing laypersons to provide legal advice to his clients." (ODC-211)

11. On October 17, 2005, the Disciplinary Board deferred the disciplinary investigation proceedings, but directed that Respondent "shall not engage in or provide the type of work that is the subject of the DB-7 Request and the substantially similar and related pending civil actions." (ODC-185)

12. In 2001, Respondent became the Pennsylvania "Plan Attorney" for various estate planning businesses such as American Family Prepaid Legal Corporation and Heritage Marketing & Insurance. These businesses were operated by Jeffrey Lewis Norman and his father. (ODC-106 at 9-10, 13-15, 35, 42-43; ODC-135 at 4, 7)

13. The companies' "primary target market" was senior citizens 65 and older. (ODC-106 at 9.10, 13 - 15, 35, 42-43; ODC-135 at 4, 7)

14. Respondent received \$300 per referral from American Family. In 2002, American Family paid Respondent \$187,275. (ODC-161; N.T. 7/26/12 at 226-229)

15. American Family representatives were paid a commission of \$625 to \$750 for each "membership" they obtained. (ODC-106 at 196)

16. In May 2005, Respondent's law office drafted trusts for 107 Pennsylvania residents. (ODC-94, pages dated May 23, 2005) In 2007, Respondent acknowledged that he had 400 referrals from estate planning companies. (N.T. 3/27/13 at 257-59)

17. One of American Family and Heritage's "industry and market challenges" was identified as "Investigations initiated by local and state authorities." (ODC-135 at 27, 51, 53)

18. The Heritage Insurance salesperson's title was "Asset Preservation Specialist."

19. During the period it operated in Pennsylvania, Heritage sold annuities to 1,500 to 2,000 consumers, some of whom may have purchased multiple policies. (ODC-106 at 43-44)

20. In 2003 - 2004, Gary Shade, a Financial Investigator for the Office of the Attorney General, began an investigation into the activities and operations of Estate Planning Advisors (EPA). EPA was an estate planning business operated by Brian Newmark, a former employee of ALMS. (N.T. 12/7/11 at 78-100; ODC-164A; ODC-17)

21. Investigator Shade found that EPA was marketing itself to senior citizens as being comprised of highly trained advisors in the field of estate planning, and the principal message was that it was advantageous for senior citizens to "avoid probate" by means of a revocable living trust. (N.T. 12/7/11 at 78-100; ODC-164A; ODC-17)

22. In 2005, Investigator Shade, working undercover, bought a Weinstein revocable living trust from a representative of Kaehall Estate Planning Coordinators (Kaehall). (ODC-164B)

23. The nonlawyer representative made a presentation to Investigator Shade about the benefits of living trusts and the disadvantages of probate and gave him a brochure about living trusts, which invited clients to call the "trained staff" at Kaehall with any questions. (ODC-164B)

24. The representative asked Investigator Shade to have his financial papers with him at the time the trust was delivered. (N.T. 12/7/11 at 127-38)

25. Investigator Shade received a five-minute call from Respondent to confirm his information, and, as far as legal advice and counseling, Respondent told Shade that a "living will" was a legal document with "boxes to check." (N.T. 12/7/11 at 127-38)

26. Investigator Shade had no further contact with Respondent and the only explanation of the trust he received came from the nonlawyer representative. (N.T. 12/7/11 at 127-38)

27. In 2005, Investigator Shade, working undercover, arranged for a meeting with Williams Woods, an American Family "representative." (N.T. 12/7/11 at 146-54; ODC -164C)

28. Investigator Shade told Mr. Woods that he was interested in updating his will. Mr. Woods gave Shade a brochure entitled "Brett B. Weinstein, Attorney at Law, An Informational Estate Planning Brochure." Stamped on the brochure was "American Family Legal Plan", its address and toll-free number. (N.T. 12/7/11 at 146-54; ODC-164C)

29. Todd B. Garry was a delivery agent for Heritage. Before working at Heritage (2002 – 2006), from 1999 to 2002 he worked as a delivery agent at The Patriot

Group, delivering Bohmueller living trusts. (N.T. 3/7/12 at 323-38, 341-43, 352-53, 378-79, 404)

30. Mr. Garry was found to be credible and gave reliable testimony.

31. Mr. Garry's business card at Heritage had the title, "Asset Preservation Specialist," above "License Number 61890," his Pennsylvania Insurance Department license number. (N.T. 3/7/12 at 323-38, 341-43, 352-53, 378-79, 404)

32. Mr. Garry did not understand that American Family was a prepaid legal plan. (N.T. 3/7/12 at 323-38, 341-43, 352-53, 378-79, 404)

33. Mr. Garry was not compensated for delivering the trusts; rather, he made a living at Heritage by selling annuities. (N.T. 3/7/12 at 349, 354-55, 386-88, 393-94, 406, 410, 417-18)

34. On less than five occasions, Mr. Garry delivered and notarized a Weinstein trust at a location other than the client's home. Of these instances, if the trust was delivered at Respondent's office, the client had no contact with Respondent. (N.T. 3/7/12 at 349, 354-55, 386-88, 393-94, 406, 410, 417-18)

35. After he notarized the living trust, Mr. Garry discussed the client's assets and found out whether the client had sufficient assets to fund an annuity. If Mr. Garry recommended an annuity, and if the client had a brokerage account and money in the bank, Mr. Garry took liquid assets that would have funded the trust, and put them into an annuity. (N.T. 3/7/12 at 349, 354-55, 386-88, 393-94, 406, 410, 417-18)

36. At no time did Mr. Garry have occasion to refer a client with a question to Respondent and at no time did Mr. Garry interrupt a delivery so that the client could call Respondent to resolve any concern. In all of the instances in which Mr. Garry delivered a Weinstein living trust for Heritage, there was never a time when a client said he or she was

not going to sign the living trust until "I speak to the attorney" or words to that effect. (N.T. 3/7/12 at 395-96, 430-31, 435-38)

37. If the client owned a home, it was usually deeded to the living trust, and the paperwork processed by Respondent's office. (N.T. 3/7/12 at 395-96, 430-31, 435-38).

38. Mr. Garry delivered a trust to Elsie Kreener on June 27, 2005. (ODC-92, ODC-92A)

39. Other than the \$1,000 in Miss Kreener's checking account, Mr. Garry "had no knowledge that she had any assets to fund the trust." (N.T. 3/7/12 at 392, 429-30)

40. Mr. Garry brought Miss Kreener to the Heritage office to sign the trust and have it notarized and witnessed. Mr. Garry did not discuss with Miss Kreener about bringing her to Respondent's office. (N.T. 3/7/12 at 392, 429-30)

41. In late 2003, Jane Francis Bodle received a postcard in the mail concerning "how to avoid probate" in Pennsylvania. (N.T. 12/8/11 at 35-39)

42. Mrs. Bodle was found to be credible and gave reliable testimony.

43. Mrs. Bodle returned the postcard and received a call from Bill McSweeney from American Family, who asked if he could come to her residence to explain "the program of how to avoid probate." (N.T. 12/8/11 at 35-39)

44. Mrs. Bodle did not know that American Family involved a "membership". She thought that Mr. McSweeney was coming to her home to "explain how to avoid probate," and she believed she was paying for a living trust, not a membership. (N.T. 12/8/11 at 62)

45. Mr. McSweeney drew a diagram at the dining room table illustrating that, upon the death of the last spouse, the estate would "go into probate," their children

would not be allowed to enter the property, and “12 to 13 people, including the court, could come into [the Bodle] property for three months up to 36 months.” (N.T. 12/8/11 at 39-412)

46. Mrs. Bodle stated that, between the time she and her husband signed Weinstein’s fee agreement and the time the living trust was delivered, Respondent did not call her. Rather, Mrs. Bodle called the Weinstein law office to request a change in the trust documents. (N.T. 12/8/11 at 46-54, 89-90)

47. When Respondent came onto the telephone line, he put a secretary on the line to make a note of the changes. The call lasted thirty seconds. (N.T. 12/8/11 at 46-54, 89-90)

48. Lonnie Goodling from Heritage delivered the Weinstein living trust to the Bodles on March 9, 2004. Mr. Goodling explained the living trust generally, but the Bodles told him they didn’t understand it. Mr. Goodling explained the trust again, but did not refer the Bodles to Respondent. (N.T. 12/8/11 at 46-54, 89-90)

49. Mr. Goodling was found to be credible and gave reliable testimony.

50. Mr. Goodling returned to the home to try to sell the Bodles an annuity. (N.T. 12/8/11 at 46-54, 89-90)

51. George F. Long, Jr., 73 years of age, received a card in 2005 concerning avoiding probate. (N.T. 12/8/11 at 99, 103-104, 106, 129-33)

52. Barbara Hill and Todd Garry came to the Longs’ home. Ms. Hill and Mr. Garry talked to the Longs about “estate planning” and the need to “redo” their existing wills. (N.T. 12/8/11 at 99, 103-104, 106, 129-33)

53. Ms. Hill was found to be credible and gave reliable testimony.

54. Ms. Hill and Mr. Garry did not tell the Longs that any questions they had about whether the will needed to be “redone” should be directed to Respondent;

instead, Ms. Hill and Mr. Garry answered Mr. Long's questions. (N.T. 12/8/11 at 99, 103-104, 106, 129-33)

55. Ms. Hill discussed with Mr. Long that avoiding probate would save "a lot of money." (N.T. 12/8/11 at 99, 103-04, 106, 129-33)

56. Mr. Long was not asked if he wanted Respondent as his lawyer; he thought that Mr. Garry selected Respondent and that Respondent was representing American Family. (N.T. 12/8/11 at 108-109, 111-13, 117, 119-20, 135-38, 142-43; ODC-103-A)

57. Mr. Long and his wife had no recollection of speaking with Respondent at any time. (N.T. 12/8/11 at 108-09, 111-13, 117, 119-20, 135-38, 142-43; ODC-103A)

58. No one from American Family told the Longs that they could go to Respondent's office to obtain the trust documents. (N.T. 12/8/11 at 108-09, 111-13, 117, 119-20, 135-38, 142-43; ODC-103A)

59. Mr. Garry "read over" the pages of the completed trust with the Longs. When the Longs later found a mistake in the trust, they called Mr. Garry because Mr. Garry "had all of the paperwork, and he did the notarizing, explaining everything." (N.T. 12/8/11 at 108-09, 111-13, 117, 119-20, 135-38, 142-43; ODC-103A)

60. Mr. Garry forwarded corrections to the trust on Mr. Garry's letterhead. Mr. Long's will contained the same dispositive provisions as the living trust. (N.T. 12/8/11 at 108-09, 111-13, 117, 119-20, 135-38, 142-43; ODC-103A)

61. Don Drenner, who was 68 years of age in 2004, met with American Family representative Mr. Seng. (N.T. 12/8/11 at 157-61, 177-78, 196-99, 201)

62. Mr. Drenner was found to be credible and gave reliable testimony.

63. Mr. Seng told Mr. Drenner that a living trust would have tax benefits and would avoid probate. Mr. Drenner had a will, but he and Mr. Seng did not have a detailed discussion about the will. (N.T. 12/8/11 at 157-61, 177-78, 196-99, 201)

64. Mr. Seng told Mr. Drenner that the trust would be drafted through Respondent's office, but did not advise him that any legal questions that related to a revocable living trust needed to be asked of and answered by an attorney. (N.T. 12/8/11 at 157-61, 177-78, 196-99, 201)

65. Mr. Drenner considered that Mr. Seng was selling a trust, not a membership in American Family. (N.T. 12/8/11 at 157-61, 177-78, 196-99, 201)

66. Mr. Drenner never met with nor spoke to Respondent. (N.T. 12/8/11 at 161-62, 184)

67. The living trust was delivered to Mr. Drenner by Joann Small, who told Mr. Drenner that she was from the "American Plan" and also that she "was representing Weinstein." (N.T. 12/8/11 at 161-62, 184)

68. Ms. Small went over "every section of [the trust] with" Mr. Drenner, and "[explained]" it to him, telling him the purpose of each of the documents. (N.T. 12/8/11 at 161-62, 184)

69. After explaining the trust to Mr. Drenner, Ms. Small asked to see Mr. Drenner's financial statements and told him she wanted him to buy an annuity. Mr. Drenner declined. (N.T. 12/8/11 at 161-65, 178, 181-82, 204-05)

70. When Mr. Drenner discovered a mistake in his retitled deed, Ms. Small told him to send it to Respondent's office to her attention, so it could be redone. (N.T. 12/8/11 at 161-65, 178, 181-82, 204-205)

71. Marsha Till learned in early January 2005 that her mother, Mrs. Bentz, had purchased a Weinstein/American Family living trust. (N.T. 12/8/11 at 209-216)

72. Ms. Till was found to be credible and gave reliable testimony.

73. Ms. Till examined a binder that was in her mother's home which contained the Weinstein living trust and, among other things, a chart with two columns of text, "Simple Will/No Will" and "Legal Plan Revocable Living Trust." On the bottom of the chart under the column "Simple Will/No Will," on a line under "Similar Estate Size General Cost Estimation," the chart for Mrs. Bentz stated, "A Lot," but indicated \$1,995 for the trust. (N.T. 12/8/11 at 209-216)

74. The letter from Respondent accompanying the living trust for Ms. Till's mother was dated December 14, 2004. (ODC-99)

75. Around January 7, 2005, Ms. Till asked her mother where and how she got the living trust, and her mother was unable to tell Ms. Till how that had occurred. (N.T. 12/8/11 at 242-45)

76. Joanne Brentari testified that in October 2005, her father-in-law, Herbert J. Brentari, Sr., was 79 years of age.

77. Ms. Brentari was found to be credible and gave reliable testimony.

78. In October 2005, Ms. Brentari saw a check dated October 4, 2005 made out to American Family Legal Plan in the amount of \$1,995 with the "memo," "For Estate Plan." Except for the signature, the balance of the writing on the check was not in Mr. Brentari's handwriting.

79. Respondent spoke with Mr. Brentari on October 15, 2005 regarding who Mr. Brentari wanted to handle his financial affairs. (N.T. 7/26/12 at 127)

80. Ronald Patten, "Asset Preservation Specialist License #123656," delivered the trust to Mr. Brentari. (N.T. 12/8/11 at 252-58, 270-71; ODC-102A-F)

81. Donald Nace was 79 years of age in February of 2003 and answered a Weinstein advertisement about obtaining a living trust to avoid probate. (N.T. 3/8/12 at 36-39)

82. Mr. Nace was found to be credible and gave reliable testimony.

83. James Weatherspoon from American Family came to Mr. Nace's home and explained living trusts in detail, stating that the purpose of the living trust was to avoid probate and save time and expense. (N.T. 3/8/12 at 36-39)

84. Mr. Weatherspoon was found to be credible and he provided reliable testimony.

85. Mr. Weatherspoon never told Mr. Nace that he could pick up the trust at the lawyer's office. (N.T. 3/8/12 at 5-7, 12-13, 16-17, 19, 34, 41-43, 53)

86. Mr. Nace did not recall speaking with Respondent or anyone from his office, but said it was possible that he had called the office. (N.T. 3/8/12 at 5-7, 12-13, 16-17, 19, 34, 41-43, 53)

87. Gerald Lewis from Heritage delivered and explained each section of the trust to Mr. Nace. (N.T. 3/8/12 at 57)

88. At the time of the delivery, Mr. Nace stated, "it turned out that [Lewis] wanted to sell [him] an...annuity policy." Mr. Nace was not interested in another annuity but Lewis "kept talking, so at that point," Mr. Nace "finally agreed to go along with it." (N.T. 3/8/12 at 21-22, 61)

89. Petitioner's expert witness, John A. Terrill, Esquire, was credible and provided reliable testimony.

90. In Pennsylvania, probate is a simple filing with a modest fee (far less than the \$1,995 charged for the living trust except in the case of large estates), and the estate settlement process is the same and involves the same legal fees and inheritance tax returns for a will-based or living-trust based estate.

91. As confirmed by Mr. Terrill, the proper method of assisting the client in preparing an estate plan includes many steps that require attorney involvement (assemble and analyze client information and assets; meet with the client to discuss dispositive intentions; review existing estate planning documents, the client's tax situation and prospects for tax planning; determine the client and potential beneficiaries' age and health, and a host of related information and issues.) (N.T. 7/24/12 at 17-178, 268-301)

92. Respondent testified at the disciplinary hearing that, after the Disciplinary Board's Order on October 17, 2005, wherein he was directed to stop engaging in or providing the type of work that had been the subject of the AVC and ODC letters of concern, he changed his practice. (N.T. 7/26/12 at 253-54, 304-05, 312-15, 344-45)

93. Respondent stated, "I go out every single week and visit clients...to see what took place, what's going on, to...talk to them." (N.T. 7/26/12 at 253-54, 304-05, 312-15, 344-45)

94. Respondent said he knew the "Simple Will/No Will" charts were not legally correct, and when agents gave a client erroneous information he "immediately" called the agent and told them, "it's not to be done again." (N.T. 7/26/12 at 253-54, 304-05, 312-15, 344-45)

95. Mrs. Jean Snyder of Germansville, PA testified on rebuttal that on June 5, 2012, she was sold a living trust in her home by a sales agent from "Integrity, Inc., Estate Planning Coordinators."

96. Mrs. Snyder was found to be credible and gave reliable testimony.

97. The agent showed her a "Simple Will/No Will" comparison chart (ODC-192), which was essentially identical to the chart Mr. Terrill testified was highly misleading and that Respondent agreed was not "legally correct." (N.T. 7/26/12 at 312)

98. The agent told Mrs. Snyder that Mrs. Snyder should have her bank statements ready to give to the agent the next time the agent came, and stated that she could get Mrs. Snyder a higher rate of return on her money than she was already getting. (N.T. 9/19/12 at 6-20)

99. Following the June 5, 2012 meeting, Mrs. Snyder received a telephone call from Respondent. The call lasted five minutes. Mrs. Snyder related that Respondent thanked her for becoming a client of United Integrity Group. (N.T. 9/19/12 at 21-22, 57-61)

100. Respondent did not ask her about the provisions of her will or tell her that she could meet with him. She remembered him telling her that, if she had any questions, she could feel free to call him. (N.T. 9/19/12 at 21-22, 57-61)

101. Looking at pages with information about family names and spellings and a checklist, Mrs. Snyder remembered going over additional information that appeared on those pages with Respondent, but she was not specific as to exactly what she recalled. (N.T. 9/19/12 at 21-22, 57-61)

102. Mrs. Snyder did not ask Respondent any questions about the differences between wills and trusts because the United Integrity agent had explained the differences with the "Simple Will/No Will" and "Revocable Living Trust" chart. (ODC-192; N.T. 9/19/12 at 51-52)

103. When the agent returned with the trust in August 2012, the agent told Mrs. Snyder what the "different papers...were for." (N.T. 9/19/12 at 26)

104. In addition to the conduct engaged in by Respondent by his involvement with various estate planning businesses, Respondent involved Barry O. Bohmueller in the same type of activity.

105. Mr. Bohmueller and Respondent were law school classmates. In 1999-2000, Mr. Bohmueller wanted to start his own practice. (ODC-5 at 128-129, N.T. 7/26/12 at 256-257) Respondent placed a deposit on a "virtual office" which was to be rented in Mr. Bohmueller's name. (ODC-5 at 326)

106. At the time, Respondent was working with Advanced Legal Services (ALMS). The president of ALMS had asked Respondent not to do business with Brian Newmark, an employee of ALMS who was leaving to start a competing company called EPA. (N.T. 7/26/12 at 202-204)

107. Respondent gave Mr. Bohmueller's contact information to Mr. Newmark, who began using Bohmueller living trusts.

108. From 2000 until approximately 2004, Respondent and Mr. Bohmueller combined their practices to provide living trusts. (ODC-5 at 326)

109. Respondent's support staff prepared the Bohmueller living trusts. (ODC-5 at 326)

110. Respondent and Mr. Bohmueller never had a written agreement concerning the office sharing arrangement. (ODC-5 at 133-35)

111. There was no specific agreed rent or payment amount that Mr. Bohmueller was required to pay for the use of Respondent's staff and office supplies. (ODC-5 at 133-35)

112. Mr. Bohmueller's letterhead accompanied the completed trusts that were delivered by EPA. (N.T. 12/7/11 at 78-100; ODC-164A; ODC-17)

113. In 2000, Victoria Larson worked at EPA with the title, "Certified Senior Advisor" after three or four days of training. (N.T. 3/7/12 at 6-8; 16-17, 21-22, 29-34, 37-46, 49-53, 139-40, 149-50)

114. Ms. Larson was not licensed to practice law.

115. Ms. Larson gave reliable testimony at the hearing.

116. Ms. Larson had previously worked at ALMS where she sold Respondent's trusts to senior citizens in the late 1990s or early 2000s. (N.T. 3/7/12 at 6-8, 16-17, 21-22, 29-34, 37-46, 49, 53, 139-40, 149, 50)

117. Ms. Larson went to the homes of senior citizens to speak about the benefits of a living trust, which she stated were probate avoidance, tax saving, attorney fee avoidance, and quicker distribution of assets. (N.T. 3/7/12 at 6-8, 16-17, 21-22, 29-34, 49-53, 139-40, 149-50)

118. Ms. Larson had Mr. Bohmueller's fee agreement form (BB-35) and business card, on which she wrote her name and telephone number. (ODC-31A)

119. The fee agreement stated that Mr. Bohmueller would provide a living trust for the client, and it contained a toll-free "Client Services" number for EPA. (N.T. 3/7/12 at 6-8, 16-17, 21-22, 29-34, 37-46, 49-53, 139-40, 149-50)

120. Ms. Larson used a document entitled "BOHMUELLER LAW OFFICES Confidential Information for Estate Plan" (ODC-162A), to record personal information about the client's testamentary wishes, and an "Asset Worksheet" for the financial information. (ODC-162F)

121. Ms. Larson was neither trained by nor supervised by Mr. Bohmueller. Ms. Larson was only paid for the visit if she sold a trust. (N.T. 3/7/12 at 6-8, 16-17, 21-22, 29-34, 37-46, 49-53, 139-40, 149-50)

122. Ms. Larson also delivered the completed trust documents to the client. (N.T. 3/7/12 at 63-70, 124-27, 140-43)

123. Ms. Larson went through each section of the trust and the living will and other documents with each client and explained the provisions. Ms. Larson assisted the client in funding the trust and transferring assets to the trust. (N.T. 3/7/12 at 63-70, 124-17, 140-43).

124. When the client had a question, Ms. Larson determined if the question should be answered by Mr. Bohmueller. (N.T. 3/7/12 at 63-70, 124-27, 140-43)

125. Ms. Larson was not paid for the delivery, but obtained a commission from EPA if she sold an annuity. (N.T. 3/7/12 at 63-70, 124-127, 140-43)

126. John Wight delivered living trusts for EPA. (ODC-116 at 118-19, 134-35)

127. Mr. Wight was found to be credible and gave reliable testimony.

128. At EPA, Mr. Wight was Mr. Bohmueller's delivery agent on several of the trusts. (ODC-116 at 118-19, 134-35)

129. It was Mr. Wight's responsibility to explain the trust to the client "in detail." (ODC -28)

130. Mr. Wight received a commission from EPA when he sold an insurance product. (ODC-116 at 126-134)

131. In 2001, the late Walter and Susan Gilmour were in their 80's. The Gilmours' son, Walter Gilmour, Jr., was his parent's caretaker. (N.T. 3/7/12 at 169, 211-13, 301, 209-10, 170-74)

132. Mr. Gilmour was found to be credible and gave reliable testimony.

133. A representative from an entity called The Patriot Group, Mike Hamilton, came to the Gilmours' home and sold them a Bohmueller revocable living trust. (N.T. 3/7/12 at 169, 211-213, 301, 309-310, 170-74)

134. Mr. Gilmour and his parents neither spoke with nor met Mr. Bohmueller. (N.T. 3/7/12 at 179-80, 181-84, 187-88, 200, 205, 235, 256, 258, 278-79, 312-16)

135. On April 24, 2001, the revocable living trust and the ancillary documents were delivered to the Gilmours by Steve Strobe of The Patriot Group. (N.T. 3/7/12 at 179-80, 181-84, 187-88, 200, 256, 258, 278-79, 312-16)

136. The Gilmours signed the "Pennsylvania Delivery Receipt and Checklist," (ODC-58) which referred to Mr. Strobe as a "representative of Bohmueller & Associates Law Offices." (N.T. 3/7/12 at 179-80, 181-84, 187-88, 200, 205, 235, 256, 258, 278-79, 312-16)

137. Mr. Gilmour, Jr. believed that Mr. Bohmueller was a lawyer working with The Patriot Group and that Mr. Strobe was an estate planner and advisor, not an insurance salesman. (N.T. 3/7/12 at 179-80, 181-84, 187-88, 200, 205, 235, 256, 258, 278-79, 312-16)

138. Mr. Strobe reviewed the trust with the Gilmours and explained the terms of the trust to them. (N.T. 3/7/12 at 179-80, 181-84, 187-88, 200, 205, 235, 256, 268, 278-79, 312-16)

139. The Gilmours liquidated securities worth \$2.8 million dollars to buy four annuities. (N.T. 3/7/12 at 179-80, 181-84, 187-88, 200, 205, 235, 258, 278-79, 312-16)

140. Harcourt and Barbara Trimble bought a Bohmueller living trust in 2001, when Mr. Trimble was 89 and Mrs. Trimble was 84. (N.T. 3/8/12 at 135-137, ODC-62; ODC-63)

141. Harcourt Trimble, III is the son of the Trimbles and testified at the hearing. He was credible and gave reliable testimony.

142. When the trust was delivered, the Trimbles and Mr. Strobe signed the "Pennsylvania Delivery Receipt and Checklist." (ODC-63)

143. The Trimbles bought an annuity through Mr. Strobe. (N.T. 3/8/12 at 135-37, ODC-62, ODC-63)

144. After the deaths of his parents, Mr. Trimble contacted Mr. Strobe and suggested that he, Trimble, engage Mr. Bohmueller to handle his parents' estates.

145. Mr. Strobe said Mr. Bohmueller was busy and suggested that he call Respondent, which Mr. Trimble did. Although Mr. Trimble engaged Respondent and met with him on numerous occasions, Mr. Trimble received invoices on Mr. Bohmueller's letterhead handed to him by Respondent.

146. Mr. Trimble received correspondence on Mr. Bohmueller's letterhead. Mr. Trimble made out fee checks to Respondent, which were endorsed to Bohmueller Law Offices.

147. Mr. Bohmueller's check register for September 8, 2003, reflects that he paid two checks to Weinstein Law Offices with the notation that they were for the Trimbles' estates. (ODC-9A checks 1271 and 1272)

148. Although he did not deal with Mr. Bohmueller during the representation, Mr. Trimble concluded from the above documents and conduct, that

Respondent and Mr. Bohmueller worked together. (N.T. 3/8/12 at 160-62, 168-70, 174-75, 179-80, 183, 286, 299-302; ODC-97D1, D2; ODC-97A; ODC-97H; ODC-97G)

149. Gilbert and Joanne Brennan were in their 70's in 2001. (N.T. 12/8/11 at 288-89)

150. On February 11, 2001, Mr. and Mrs. Brennan obtained a Bohmueller revocable living trust. (ODC-68)

151. With a cover letter dated March 6, 2003, on Bohmueller Law Offices letterhead, signed by a member of Respondent's legal staff, Ms. Larson brought to the Brennans' their redrafted powers of attorney. (ODC-71A; N.T. 7/26/12 at 210-11)

152. The Brennans' powers of attorney that accompanied the March 6, 2003 letter from Bohmueller Law Offices stated on the upper right hand side: "RECORD AND RETURN TO: Weinstein Law offices." (ODC-176A and ODC-176B)

153. Respondent called Margie Brennan Trefz, who is the daughter of the Brennans and told her that "there were going to be potential clients calling her" and would she mind if "they" gave Ms. Trefz's phone number to potential clients "so that [the potential clients] could ask questions about the practice and whether the [potential clients] should use them." (N.T. 3/8/12 at 111)

154. Between 2001 and 2004, checks from Mr. Bohmueller's four IOLTA accounts and one business account made out to Respondent totaled approximately \$1.2 million, while checks made out to Mr. Bohmueller totaled approximately \$510,000. (ODC-11; ODC-160)

155. Numerous checks in the Bohmueller accounts were written by Respondent, using a Bohmueller signature stamp. (ODC-9)

156. Respondent had no records that showed what these payments to him were for or justifying the amounts involved. (ODC-9A)

157. Respondent was paid approximately \$1.2 million by Mr. Bohmueller. (N.T. 7/26/12 at 263-65, 271, 293-95, 316-17)

158. Respondent explained that the checks were for Mr. Bohmueller's use of office staff and supplies. There is no evidence to support this contention. (N.T. 7/26/12 at 263-65, 271, 293-95, 316-17)

159. Respondent then offered the explanation that the payments were for "capital improvement" to Bohmueller's office. (N.T. 7/26/12 at 263-65, 271, 293-95, 316-17)

160. Respondent's testimony as to the \$1.2 million in payments is not credible and not persuasive. (N.T. 7/26/12 at 263-65, 271, 293-95, 316-17)

161. Earl Epstein, Esquire, testified on Respondent's behalf regarding his conclusions on the propriety of Respondent's practice.

162. Although Mr. Epstein offered his opinion that Respondent's practice did not violate the Rules of Professional Conduct, (N.T. 7/24/12 at 248, 254-55), he agreed with the opinions of Petitioner's expert, John Terrill, Esquire, that each estate planning representation is different because of the client's particular situation and assets, and the lawyer determines, based upon the facts, how the estate should be structured. (N.T. 7/24 at 317-19)

163. Robert Davis, Esquire, testified on Respondent's behalf. He is a former deputy chief counsel for the Disciplinary Board.

164. Respondent became the Plan Attorney for AFLP after reviewing ethics opinions prepared by Mr. Davis setting forth his view that AFLP would not violate any Rules of Professional Conduct, (N.T. 7/26/12 at 190,191)

165. Mr. Davis performed a review of AFLP's proposed operations in Pennsylvania, made recommendations, and helped draft the written materials used by AFLP in Pennsylvania.

166. Mr. Davis did not specifically advise Respondent as to Respondent's practice, nor did he give an opinion that Respondent's practice comported with the Rules of Professional Conduct. (N.T. 7/26/12 at 29-30, 84-86)

167. Respondent did not express remorse for his conduct, nor acknowledge that his conduct violated the ethical rules.

III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.2(a) - Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
2. RPC 1.4(a)(2) - A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.

3. RPC 1.4(b) - A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

4. RPC 1.5(e) - A lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm unless (1) the client is advised of and does not object to the participation of all the lawyers involved; and (2) the total fee of the lawyers is not illegal or clearly excessive for all legal services that rendered the client.

5. RPC 1.7(a)(2) - Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

6. RPC 5.1(c)(1) - A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if the lawyer orders, or with knowledge of the specific conduct, ratifies the conduct involved.

7. RPC 5.5(a) - A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so.

8. RPC 5.7(c) - A lawyer who is an owner, controlling party, employee, agent, or is otherwise affiliated with an entity providing nonlegal services to a recipient is subject to the Rules of Professional Conduct with respect to the nonlegal services if the lawyer knows or reasonably should know that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship.

9. RPC 8.4(a) - A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

10. RPC 8.4(c) - A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges against Respondent alleging numerous violations of the Rules of Professional Conduct. Petitioner bears the burden of proving, by a preponderance of the evidence, that Respondent's actions constitute professional misconduct. This burden must be established by clear and satisfactory evidence. Office of Disciplinary Counsel v. Surrick, 749 A.2d 441 (Pa. 2000). The record consists of nine days of testimony and numerous exhibits. Following review of the record in its entirety, the Board concludes Petitioner proved that from 2001 to 2012, Respondent, both in his solo practice and acting in concert with Barry Bohmueller, Esquire, assisted sales and delivery agents for a series of estate planning companies in the unauthorized practice of law. In the course of his participation in these activities, Respondent engaged in false and misleading conduct, failed to consult with his clients concerning their objectives and placed his own interests above his responsibilities to his clients.

Respondent was admitted to the practice of law in 1996. As far back as 1999 or 2000, Respondent has been associated with estate planning businesses, drafting trusts that were sold to senior citizens by nonlawyers. Respondent's involvement in these businesses caught the attention of Office of Disciplinary Counsel, who issued DB- 7 letters to Respondent and letters of concern in 2001 and 2002. These letters specifically addressed Respondent's use of nonlawyer sales agents to sell, deliver and explain living

trusts to his clients in violation of RPC 5.5(a), the prohibition against assisting in the unauthorized practice of law.

In 2001, Respondent entered into an Assurance of Voluntary Compliance with the Attorney General of Pennsylvania, agreeing to cease this same misconduct. In 2004, the Attorney General commenced an action in the Commonwealth Court against Respondent, Barry Bohmueller, and others, alleging violations of the consumer protection laws and the prohibition against the unauthorized practice of law. Respondent signed an Interim Consent Decree with the Attorney General in 2004, providing that he would “refrain from authorizing and utilizing laypersons to provide legal advice to his clients.” (ODC-211) In 2005, Office of Disciplinary Counsel began an investigation of Respondent and Mr. Bohmueller, which was deferred by Order of the Disciplinary Board dated October 17, 2005. The Board’s Order stated that the deferment was subject to the condition that Respondent not engage in or provide the type of work that was the subject of the DB-7 Requests and the pending civil action in Commonwealth Court.

Nevertheless, instead of ceasing the conduct of which he had been repeatedly warned, the record is replete with evidence that Respondent continued unabated, and deepened his involvement still further by co-opting his law school classmate, Mr. Bohmueller, to participate in the same activities and to share the fees generated from the unethical activities.

The testimony of the nonlawyer sales agents who worked for various estate planning entities was consistent: the client, usually a senior citizen, was identified through advertisements, seminars or cold calls; the nonlawyer sales agent went to the client’s home and sold the living trust through an “avoid probate” sales pitch, using Respondent’s brochure and misleading charts; the agent had the client sign various documents and a

Weinstein fee agreement, collected the fee and obtained personal and financial information.

This information was given to Respondent's law office, where a living trust was drafted, despite the fact that Respondent had scant or no contact with the client and had not gone through the proper steps to provide competent representation in estate planning, such as reviewing existing estate planning documents, discussing dispositive intentions, analyzing tax situations, and determining the competency of the client. The living trust was taken back to the client's home for signature by a nonlawyer delivery agent, at which point the agent attempted the sale of annuities. The only explanation of the living trust given to the client came from the nonlawyer agent. None of the agents testified as to any legal advice or counseling given to the clients by Respondent.

The testimony of the clients or their family members was similarly consistent. Witness after witness, including Investigator Gary Shade of the Attorney General's Office who worked undercover, testified that they had no contact or just a brief call with Respondent. The record demonstrates that this process was repeated many times over, with Respondent receiving referrals from estate planning entities and drafting many hundreds, perhaps thousands of living trusts over the past ten to twelve years.

Respondent's relationship and shared practice with Mr. Bohmueller exacerbates his misconduct. After Mr. Bohmueller consulted with Respondent about opening his own practice, Respondent loaned money to Mr. Bohmueller to set up a "virtual office", then allowed Mr. Bohmueller access to the staff and client files of the Weinstein Law offices. Respondent had full access to Mr. Bohmueller's IOLTA accounts, writing checks to himself and third parties with a Bohmueller signature stamp. Checks to Respondent totaled approximately 1.2 million dollars. Respondent was not persuasive

when he claimed that this money was paid to him for office expenses, staff, and capital improvements, especially as Respondent had no records substantiating these payments, nor did Mr. Bohmueller. With the addition of Mr. Bohmueller to the practice, Respondent realized a new way to generate even more income in the living trust scheme.

Trust marketing schemes have repeatedly been found to violate the prohibition against the unauthorized practice of law. Numerous Supreme Courts and disciplinary bodies in other jurisdictions have examined the conduct engaged in by Respondent and found it violative of the ethical rules. In re Mid-America Living Trust Associates, Inc. v. et al, 927 S.W. 2d 855 (Mo. 1996) (By accepting referrals to draft trust documents sold or recommended by nonlawyers, courts have found attorneys have aided in the authorized practice of law); People of the State of Colorado v. Michael M. Laden, 893 P.2d 771 (Colo. 1995) (nonlawyers reviewed and prepared a living trust for a flat fee; attorney reviewed the living trusts and consulted with clients for 30 minutes; unauthorized practice of law); Cincinnati Bar Association v. Kathman, 92 Ohio St. 3d 82 (Ohio 2001) (attorney provided advice too late in the process because the nonlawyer had already given legal advice to the client upon which decisions had been based).

Pennsylvania is no exception. In Office of Disciplinary Counsel v. Anonymous (G. Jeffrey Moeller), 53 DB 2000 (Pa. 2002), the Disciplinary Board addressed “the issue of whether a lay advisor engages in the unauthorized practice of law by counseling a client to create a living trust.” The Board noted in its Report that the “fundamental concern” was that the “goal of the [estate planning business] was not to provide [the client] with good advice about the disposition of her estate; it was to sell her a living trust package. By the time the matter even reached [Moeller], the advice had been given, the decision made, and the money was in hand.” (D. Bd. Rep. 5/16/02 at 10) Mr.

Moeller reviewed, modified and finalized “dozens” of trusts from the spring of 1996 to the fall of 1997. Mr. Moeller’s actions enabled a nonlawyer entity to practice law in Pennsylvania. The Supreme Court suspended Mr. Moeller for a period of one year and one day.

The Pennsylvania Supreme Court has held time and again that lawyers who engage in the unauthorized practice of law have committed serious misconduct. Office of Disciplinary Counsel v. Peter William Giovanni, No. 36 DB 2008 (Pa. 2009). Assisting in the unauthorized practice of law is equally serious. Office of Disciplinary Counsel v. Jeffrey Pearson, No. 88 DB 2008 (Pa. 2011). The Court has seen fit to impose suspensions of at least one year and one day to address the misconduct.

The instant matter represents an extremely egregious example of the unauthorized practice of law, as Respondent assisted laypersons in practicing law for an extended period of time, despite his full awareness of the impropriety of his actions. There is no other comparable case in Pennsylvania in terms of the gravity of the deception, the determined persistence, and the harm to enormous numbers of vulnerable clients. All the while, Respondent has avoided recognition of his misconduct and has made no apology for it.

The defenses offered by Respondent only corroborated the deceptive and damaging nature of his scheme. Respondent suggests that he complied with his professional responsibilities by respecting his clients’ wishes by drafting the documents they had requested. In fact, these clients generally had no intention of purchasing a living trust until the postcard arrived suggesting exorbitant probate costs, which in turn created anxiety in the potential clients. Respondent knew that sales agents and delivery agents were making erroneous statements and in some cases giving legal advice. His purported

efforts to curb and control these practices only highlight that he understood the danger of allowing laypersons, outside of his presence, to give advice as a perceived representative of Respondent's law firm. Respondent attempted to point out that living trusts are beneficial to some clients; however, he showed no evidence that he was responsible for determining which clients would truly benefit from a living trust.

Respondent attempted to convince the Hearing Committee, at various times, that he had not continued his actions after 2002, that he had changed his methods of doing business, and that he did not send out salespeople to sell his trusts. His statements were not supported by corroborative evidence, and flatly contradicted by the testimony of the sales agents and the clients, particularly that of Mrs. Jean Snyder, who was sold a living trust in June of 2012 by a sales agent affiliated with Respondent. The sales agent showed Mrs. Snyder the same "Simple Will/No Will" comparison chart that Respondent had already agreed was not "legally correct." (N.T. 7/26/12 at 312) There is no evidence of record to show that Respondent ever intends to cease his unethical behavior.

Where, as here, the Board is faced with egregious misconduct that is harmful to the public and no sign of recognition or remorse, disbarment is warranted. Office of Disciplinary Counsel v. Rainone, 911 A.2d 920 (Pa. 2006). Respondent is the type of attorney for whom the Rules of Professional Conduct specifically seek to shelter the public, as he is unfit to act as a repository of trust in representing the concerns of the public. An attorney who chooses a financial bottom line over professional integrity cannot be allowed to practice in the Commonwealth.

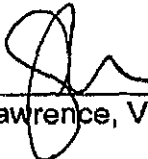
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Brett B. Weinstein, be Disbarred from the practice of law.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Gerald Lawrence, Vice-Chair

Date: March 3, 2014