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Attorney News - January 2016



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- **Follow the Disciplinary Board on Twitter**

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Justices Donohue, Dougherty, and Wecht Join High Court

In one of the largest transitions in recent memory, three new Justices took their oaths to join the Pennsylvania Supreme Court in January.

Justice **Christine Donohue**, a graduate of East Stroudsburg University and the Duquesne University Law School, is from Allegheny County. She served on the Superior Court from 2007 through 2015, after over 25 years in private practice as a trial lawyer. She also served as a member of the Disciplinary Board from 1997-2003.

Justice **Kevin M. Dougherty** graduated from Temple University and the Antioch University School of Law. He worked in the Philadelphia County District Attorney's office and in private practice before joining the Court of Common Pleas of Philadelphia County in 2001. He served as Supervising Judge of the Family Division and Administrative Judge of the Family and Trial Divisions of the court before his election to the Supreme Court in 2015.

Justice **David N. Wecht**, also of Allegheny County, graduated from Yale University and its School of Law. After a clerkship and during more than a decade in private practice, he served as Register of Wills and Clerk of the Orphan's Court of Allegheny County. He began his judicial career with the Allegheny County Court of Common Pleas in 2003, then ascended to the Superior Court in 2012. He has taught on the faculties of the Duquesne University School of Law and the Graduate School of Public and International Affairs, University of Pittsburgh.

This [infographic](#) presents interesting facts about the new justices.

ABA Journal Identifies Top Legal Stories of 2015

The staff of the American Bar Association Journal reviewed the top stories they covered in 2015, and identified the following as the most significant legal stories of the year.

1. **Same-sex marriage:** The Supreme Court's same-sex marriage decision in *Obergefell v. Hodges*, and the reaction of the nation to the change involved and its implications.
2. **Megafirms:** Large international law firm mergers leading to global firms with 6,000 or more lawyers.
3. **Dewey defeats charges:** Criminal charges against three executives of dismantled firm Dewey and LeBoeuf, indicted on over 150 counts of fraud, larceny and falsifying business records related to the firm's 2012 collapse, resulted in a mistrial after the jury was unable to reach a verdict on numerous charges after 22 days of deliberation.
4. **Bar examination passage rates plummet:** Continuing a trend developed in recent years, bar examination passage rates in several states fell to their lowest levels in 25 years.
5. **Death by blue:** High-profile cases of fatal shootings by police and deaths in custody sparked protests and controversy.
6. **No Vacancy:** Several states took steps to exclude the placement of Syrian refugees within their borders as the Syrian humanitarian crisis worsened and terrorist acts generated tension.
7. **Boston Marathon bomber convicted:** Dzhokhar Tsarnaev, the surviving member of the brother team that set off bombs at the finish line of the 2013 Boston Marathon, was convicted and sentenced to death in Massachusetts, which has not executed a prisoner since 1947.

8. **Executive orders and disorder:** President Barack Obama issues executive orders in controversial areas such as gun control and immigration after Congress rejects his proposals, and a federal court decision blocking the implementation of one may reach the U.S. Supreme Court.
9. **Capital punishment declines:** Death sentences and executions reached their lowest level in decades due to court decisions, legislation, and a moratorium in Pennsylvania. States which still impose capital punishment have encountered legal and practical difficulties obtaining the drugs used for lethal injections.
10. **The Cosby Showdown:** Allegations of rapes committed by comedian/actor Bill Cosby occupied both the news and the courts, in the form of civil suits filed by his accusers and countersuits by Cosby.

The full list and links to stories [here](#).

Top Five Pennsylvania Disciplinary Cases of 2015

Each year we review five cases decided in the Pennsylvania disciplinary system deemed, in the sole and unappealable discretion of the Editor, to be the most significant cases of the year. We look for cases that present issues which have not often arisen, especially ones reflecting new developments in practice such as technology. We also look at high-profile cases, such as those involving public officials or judicial misconduct.

This year, we found the following cases of particular interest:

1. **James Paul Carbone**, No. 71 DB 2014 (August 12, 2015).

Carbone was disbarred based on prosecutorial misconduct committed in his official role Venango County assistant district attorney. Carbone misrepresented his contacts with witnesses to a court, argued his personal opinion on a defendant's guilt to a jury, and engaged in an ex parte contact with a defendant. Aggravating factors included his refusal to participate in disciplinary proceedings and his betrayal of his position as a public officer.

2. **John J. Koresko IV**, No. 119 DB 2013 (September 4, 2015)

Koresko was disbarred for misconduct committed in various proceedings which flowed from his sale of a home to a former co-worker. Based on his belief that a second mortgage was not valid, he neither disclosed nor satisfied the mortgage, leading to years of litigation Koresko himself described as "nuclear war." The Disciplinary Board found that he filed meritless claims and appeals, obstructed discovery, engaged in conflicts of interest, made misrepresentations to courts and other parties, and committed various acts of misconduct toward opposing and third parties. He never admitted any fault in the matter.

3. **William N. Renwick**, No. 153 DB 2013 (May 14, 2015)

Renwick was suspended for two years based on his use of another attorney's CM/ECF (Case Management/Electronic Case Filing) account to file pleadings in the United States Bankruptcy Court. The account was one of a suspended attorney with whom Renwick engaged as a paralegal. Renwick did not have his own CM/ECF account and did not complete the training required to have an account. He also made false statements to the court about his relationship with the suspended attorney and his use of the account.

4. **Thomas M. Nocella**, No. 152 DB 2013 (October 20, 2015)

Nocella, who served as a judge on the Philadelphia Municipal Court and the Philadelphia Court of Common Pleas, was disbarred after he was removed from the bench and barred from judicial office by the Court of Judicial Discipline. The Disciplinary Board concluded that Nocella had violated several of the Rules of Professional Conduct in a series of knowingly false statements and failures to disclose required information in evaluation questionnaires submitted to the Philadelphia Bar Association Commission on Judicial Selection and Retention, including the facts that he was a defendant in numerous actions, that IRS liens and judgments had been entered against him, that he had filed a petition for bankruptcy, and that he had received an informal admonition as discipline.

5. **Joseph F. Lawless**, No. 177 DB 2013 (June 25, 2015).

In a prior disciplinary case, Lawless entered into a Joint Petition in Support of Discipline on Consent, which provided that he would receive a year and a day suspension stayed in its entirety by two years of probation. The terms of the probation required that he abstain from alcohol, drugs or other mind-altering chemicals, and that he maintain weekly telephone contact and twice monthly meetings with a sobriety monitor.

Lawless failed to keep up with the required schedule of contacts. His sobriety monitor warned in May that he was “not taking this seriously.” By January 2015, his monitor reported that he received only one telephone call from Lawless in December, and in February he reported no further contact since that call. In a voicemail left with the sobriety monitor in April, Lawless admitted to a relapse.

Based on his violation of the terms of probation, Lawless’s probation was revoked and he was suspended for a year and a day.

Washington Bar Suspends Ethics Opinions Due to Antitrust Concerns

The Washington State Bar Association has directed its ethics committee to stop issuing certain ethics opinions which could possibly be construed as restraint of trade. The bar association is moving cautiously in the aftermath of the decision of the United States Supreme Court in the case of ***North Carolina State Board of Dental Examiners v. Federal Trade Commission***, which was decided in February 2015.

The *North Carolina Dental* decision has sent shock waves through licensing agencies of all sorts. In that case, the high court held that the dental board could not invoke antitrust immunity for its efforts to discourage the practice of unlicensed tooth whitening services, because a majority of the board were active market participants in the dental market, and the state supervision of the board’s actions was insufficient to bring it within the sovereign power of the state. The Supreme Court cited ***Goldfarb v. Virginia State Bar***, 421 US 773 (1975), which held that a fee schedule established by a private bar association was anticompetitive and not state action.

The North Carolina decision has prompted licensing agencies all over the country to examine whether professional licensing boards have adequate state supervision in efforts to address unlicensed practice. As the Washington State Bar action demonstrates, efforts to regulate the unlicensed practice of law may have antitrust implications. The opinion by Justice Kennedy stated that the Court’s holding was “not inconsistent” with the state’s interest in defining and enforcing professional standards, but clearly some in the legal regulation field are concerned that the profession’s traditional standards of regulation may

run afoul of antitrust laws.

No Rights for Naruto, Judge Says

In **November** we reported on *Naruto v. Slater*, the “monkey selfie” case in which Naruto, a crested macaque in Indonesia, swiped the camera of photographer David Slater and snapped her own grinning selfie. People for the Ethical Treatment of Animals, or PETA, has filed suit seeking a declaration that the photo is Naruto’s intellectual property and to get royalties for the photo dedicated to a trust for the benefit of Naruto and her fellow macaque’s. The suit prompted a **withering response** from counsel for Slater and his publisher.

In January, a federal judge threw cold water on Naruto’s hopes. In **comments from the bench announcing his intention to dismiss the complaint**, U.S. District Judge William Orrick said, “I’m not the person to weigh into this. This is an issue for Congress and the president. If they think animals should have the right of copyright they’re free, I think, under the Constitution, to do that.”

Naruto was unavailable for comment, although a colleague **caught her reaction**.

Your Input is Requested

Did you miss the opportunity to respond to the Disciplinary Board survey? All is not lost!

Help us provide you with more timely and relevant news and updates. By providing us with feedback in this 3-5 minute survey, we can tailor our communication to meet your need for quality, concise, and time-sensitive information.

Please follow the link below to assist us in providing the information you desire via our monthly newsletter and social media channels:

<https://www.surveymonkey.com/r/3KTJ6TM>

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Got a tip, a link, a correction, a question, a comment, an observation, a clarification, a wisecrack, an idea you’d like to see addressed? We are always glad to hear from you. Please do not reply to this email. Write us at comments@padisciplinaryboard.org.

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