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## Attorney News - August 2015



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### Things to Remember

- **Follow the Disciplinary Board on Twitter**

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## Former Prosecutor Disbarred for Severe Prosecutorial Misconduct

A former Venango County assistant district attorney has been disbarred based on prosecutorial misconduct committed in his official role.

By **order** dated August 12, 2015, the Supreme Court of Pennsylvania disbarred James Paul Carbone, of Franklin, Venango County. The decision was based on three adjudicated instances of prosecutorial misconduct.

In one case, Carbone met at the Polk Center with witnesses whose competence was at issue in the absence of a staff psychologist, in violation of a court order, and failed to note the visits on a contacts log as required by the order. He then misrepresented the facts of these meetings to the court. His conduct eventually resulted in the dismissal of the charges against the defendant on double jeopardy grounds.

In a second case, he stated his personal opinion of the defendant's credibility to the jury, misrepresented the testimony of expert witnesses in his opening statement and closing argument, and engaged in intimidating conduct toward the defendant and counsel. This conduct resulted in the grant of a new trial to the defendant.

In a third case, he picked up a defendant and drove her to court to testify against a co-defendant, and discussed the case with her, without the knowledge or approval of her counsel. This resulted in an order disqualifying Carbone as prosecuting attorney in the case.

The Disciplinary Board found a significant aggravating factor in Carbone's failure to respond to the disciplinary proceedings against him or to participate in the disciplinary process. The Board also found as aggravation that Carbone committed misconduct as a public official, following ***Office of Disciplinary Counsel v. Cappuccio***, 48 A. 3d 1231, 1240 (Pa. 2012). The Disciplinary Board recommended disbarment, and the Supreme Court ordered that sanction in a *per curiam* order.

## Disciplined Lawyers Finish the Long Road Back

Because discipline is our business, we report many cases in which lawyers went wrong and were subject to discipline. But we see success stories as well, when lawyers who lost their right to practice due to personal issues seek reinstatement after reforming their lives.

Brian S. Quinn, of Delaware County, was **reinstated** by the Supreme Court on August 7, 2015, after a five-year retroactive suspension. Quinn was suspended after a third conviction of driving under the influence of drugs and alcohol and misappropriating funds from an estate. In his reinstatement hearing, he offered extensive evidence as to his rehabilitation from drug and alcohol addiction, his active participation in Alcoholics Anonymous and Lawyers Concerned for Lawyers, and his work in helping others recover from addiction. He testified that his work in recovery enabled him to repair damaged relationships with his family and gave him a new sense of purpose in working to assist others struggling with addiction. The Disciplinary Board unanimously recommended his reinstatement, and the Supreme Court agreed.

Attorney Robert Wilkey of Chester County took a different path, but also made his way back. Wilkey was suspended for 30 months in 2013 following a conviction of identity theft, after he submitted a credit card

application in another's name while struggling with debt from compulsive gambling. Following his suspension he undertook a rehabilitation program involving professional therapy, active participation in Gamblers Anonymous, and work on behalf of Lawyers Concerned for Lawyers. He advanced to the point where he served as a sponsor for others struggling with similar problems. The testimony indicated that Wilkey also found his work in recovery improved his family life and gave him a new sense of responsibility in his personal and professional life. The Disciplinary Board unanimously recommended reinstatement, and the Supreme Court reinstated Wilkey by **order** dated July 1, 2015.

**Lawyers Concerned for Lawyers** offers a confidential helpline answered 24 hours a day at **1-888-999-1941**. It offers a range of confidential, non-judgmental services to Pennsylvania's judges and lawyers, members of their families, and law students who are at risk as a result of alcohol and drug use, gambling, depression or other serious mental illnesses, including:

- Free information and literature;
- Referral to a qualified healthcare provider for a free, private and confidential consultation and diagnosis;
- A personalized plan of recommended treatment is provided by a qualified healthcare provider;
- Peer support from recovering lawyers and judges;
- LCL staff support;
- Referral to discuss concerns regarding another lawyer, a family member or a judge

## **ABA Warns of Sophisticated Scams Directed at Lawyers**

By now everyone has probably heard of "Nigerian scams," in which people posing as distressed foreign persons attempt to trick victims into providing banking information or even funds with the promise of large returns when supposedly locked up fortunes are released. We have **previously reported** on such scams specifically targeted to lawyers, some of which were **successful**.

The American Bar Association's ETHICSearch service has published an **Ethics Tip** warning of highly sophisticated new versions designed to draw in lawyers.

"Often the scam begins with an email with an official-looking email address and stationery, requesting services on a routine and uncomplicated legal matters, usually a collections or contract case, or a divorce settlement agreement involving a substantial sum. Ordinary retainer agreements are often signed. Some of the scammers go so far as to set up fake websites and telephone numbers, purporting to be those of legitimate companies and law firms, that will provide verification when checked."

At some point, the lawyer is informed that matter has been settled and a check is delivered, either from the "client" or sometimes from what appears to be a company or law firm. The check appears to be drawn on an out-of-town bank, and a telephone call to a number shown on the check or provided by the "client" goes to a fake number where its validity will be confirmed. The scammer makes a request that the lawyer deposit the check in the firm trust account and deduct a legal fee, then wire the balance to an offshore bank, often with an urgent need for speed.

Ultimately the check bounces, after the money is gone from the trust account. Such events often trigger trust account overdraft notifications to disciplinary authorities, and even in the absence of an overdraft notification results in shortfalls of funds belonging to other clients.

The ABA counsels care in dealing with “clients” not known personally to the lawyer who seek disbursements from checks that have not yet cleared the originating account. The **Ethics Tip** includes an extensive bibliography of articles, ethics opinions, and resources available to understand and prevent involvement in these sophisticated scams.

## Ohio Lawyers Convicted of Bribery for Settlement Offers

The Supreme Court of Ohio has **upheld the bribery convictions** of two lawyers based on civil settlement offers they extended to prosecuting witnesses on behalf of a client in a criminal case. A third lawyer pleaded guilty to charges in the matter.

The Supreme Court upheld the conviction of G. Timothy Marshall after a finding that Marshall, during a lunch with a former employee now working in the prosecutor’s office, asked her to approach the prosecuting witness in a rape case with an offer to settle the civil aspects of her case. The person to whom he communicated the offer understood that withdrawal of the criminal charges would also be part of the deal. Marshall also called a lawyer who represented another prosecuting witness’s boyfriend in an unrelated matter, and suggested he represent the witness in a civil settlement, with an expectation the witness would “say something nice to the Judge” at the defendant’s sentencing. Marshall was convicted of bribery for these actions, and the Supreme Court **upheld the conviction**.

A second lawyer, Marc Doumbas, was counsel of record for the client on behalf of whom these offers were made. He was acquitted of bribery regarding the lunchtime offer, but convicted of involvement in the offer to the lawyer and a separate course of action in which a third lawyer met with the witness’s attorney and made an escalating series of offers contingent on the witness writing a letter indicating that the defendant should receive treatment and should not be sentenced to jail. Although Doumbas did not directly extend either offer, the Supreme Court concluded that the jury could reasonably infer that as lead attorney for the defense, he was aware that his co-counsel were making settlement offers contingent on the witnesses’ cooperation, and **upheld the conviction**. The Court noted that the extension of civil settlement offers to aggrieved parties is not in itself bribery or improper conduct, but held that the evidence supported a conclusion the three lawyers did not approach the case as a civil matter, but merely as strategies within the criminal case.

## Billing Bad: Lawyer Bills for TV Time

A **Tennessee lawyer** has been **suspended** from the practice of law for one year because of a pattern of misconduct that included extreme overbilling, in which she charged her clients an hourly rate of \$250 for services that included 20 hours watching episodes of the television crime series **48 Hours**. The Court noted that the lawyer racked up \$140,000 in billings in two and a half months, in spite of the fact that:

She had taken no witness statements, prepared no expert statements, taken no depositions, propounded no discovery requests. She had, however, engaged in a prodigious amount of wheel-spinning, spending countless hours, charged at a lawyer rate, in activities such as watching *48 Hours* television episodes, waiting in hospitals for medical records, and doing internet research on strangulation.

The lawyer’s lack of recognition of wrongdoing was an aggravating factor. Among other comments, she

wrote in a motion, "Since when is television not a respectable avenue for research anyway. [sic]" Since July 23, 2015, apparently.

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