



## Judicial Profile

By Robert S. Brady, Michael R. Nestor,  
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# Hon. Kevin J. Carey, U.S. Bankruptcy Judge, District of Delaware

**F**rom the time he left private practice to take the bench in 2001, Hon. Kevin J. Carey, U.S. Bankruptcy Judge for the District of Delaware, has been intent on avoiding isolation and determined to stay involved in the legal community. His mantra: “Being involved makes me a better judge.” He has tried to stay true to this throughout his judicial career, whether by attending conferences (both speaking and listening to others), holding leadership positions in professional organizations, or teaching. By all accounts he has succeeded.

Judge Carey was the first judge to serve as president of the Turnaround Management Association (TMA), a non-profit organization comprising 9,300 turnaround and corporate restructuring professionals from around the world, and he currently serves as 2015 TMA global chairman (the first judge to hold that position as well). He is on the board of directors of the American Bankruptcy Institute, the nation’s largest association of bankruptcy professionals with more than 12,000 members. He has also participated in programs of The M&A Advisor, an organization whose annual awards are respected as a pinnacle of achievement in the M&A, turnaround, and finance industries. He was also judicial co-chair of this year’s Association of Insolvency & Restructuring Advisors’ Bankruptcy & Restructuring Conference in Philadelphia.

Judge Carey serves on the Committee on Space and Facilities of the Judicial Conference of the United States, which is responsible for \$1 billion of the federal judicial budget and is currently tasked with reducing the judiciary’s footprint by 3 percent nationwide. (He is particularly



proud of this position because he was appointed directly by the chief justice of the U.S. Supreme Court.) He is also on the Legislative Committee of the National Conference of Bankruptcy Judges, which organizes a spring reception of judges and legislators to enhance communication between the two. In his free time, Judge Carey teaches as an adjunct professor at both St. John’s University School of Law and Temple University Beasley School of Law, which he likes because it is a new skill for him and being around young people helps him “keep in touch.”

Looking at all of Judge Carey’s extracurricular activities, it would be easy to forget that he has a day job—presiding over one of the country’s busiest business bankruptcy dockets. His Chapter 11 bankruptcy cases have included the fol-

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lowing (to name but a few): Tribune Co. (owner of the *Chicago Tribune*), AbitibiBowater Inc. (paper manufacturer), New Century Financial Corp. (subprime mortgage lender), Exide Technologies (battery manufacturer), Dura Automotive Systems (auto parts manufacturer), Remy International (electric motor and components manufacturer), Foamex International (polyurethane foam manufacturer), Spansion Inc. (flash memory manufacturer), Sea Containers Ltd. (international shipper), and Muzak Holdings LLC (background music provider). In his time on the bench he has penned more than 70 reported opinions.

Judge Carey was born in Philadelphia and grew up in the suburbs (Gladwyne and Doylestown). Although his first love was baseball, which he played until high school, he was a better runner and ran track and cross country in junior high and high school. He was “really into it,” and recounts how he would get up at 4 a.m. with the indoor track team to take a bus so he could run on indoor tracks at the local colleges in the winter. Perhaps it was genetic, as his father was a track star at Villanova University under legendary coach James (Jumbo) Elliott. Judge Carey also played drums and was involved in student government, serving both as drum major for the marching band and as student body president his senior year of high school.

Judge Carey’s first leadership experience was as captain of one of three sixth-grade softball teams, which he led to an inglorious third-place finish. But he says he learned two lessons, the first being: “When team-building, don’t choose your friends unless they are the best players.” The second lesson—which he says has served him well on the bench—came when he served as umpire when the other two teams played each other, namely: “With every call, at least one party is unsatisfied.”

Judge Carey knew from an early age that he wanted to be a lawyer, because people had always told him he wrote and spoke well. He went to Pennsylvania State University and majored in political science. He tried to get a running scholarship, but there was too much competition, so he went into student government instead. He graduated in 1976 and went on to Villanova University School of Law, commuting about 60 miles round trip each day from his home in Doylestown.

One could say that Judge Carey was destined to be a bankruptcy judge. He took an interest in the subject early on in law school and landed an internship with the late Professor Arnold (Arnie) Cohen, who was writing a bankruptcy textbook. At the time, Congress was taking up a comprehensive reform of federal bankruptcy law that led to the replacement of the Bankruptcy Act of 1898 with the Bankruptcy Code of 1978. Cohen’s textbook was based on the Act, but needed to be updated to reflect the passage of the Code, so Judge Carey developed a good working knowledge and understanding of both. One of the major changes wrought by the Code was to create federal bankruptcy courts with permanently assigned judges to oversee bankruptcy cases. Under the Act, cases were overseen by federal officials with quasi-judicial powers, known as “referees.” Unlike referees under the Act, judges under the Code had

the ability to hire and pay law clerks. So in 1979, former referee-turned-bankruptcy Judge Thomas M. Twardowski of the U.S. Bankruptcy Court for the Eastern District of Pennsylvania in Reading, a Villanova law alumnus, asked Cohen to recommend a candidate for his first law clerk. Cohen recommended Carey, and he got the job.

Judge Carey describes his clerkship with Judge Twardowski as a “tremendous experience,” which planted the seed in his mind that he wanted to be a judge someday. For one-and-a-half years he sat in the judge’s courtroom, attended chambers conferences, drafted opinions, and handled administrative tasks such as review of files and scheduling—as Judge Carey says, he “did it all!” Judge Twardowski was “a great mentor,” a “legendary figure,” and “a good example to [Eastern District of Pennsylvania] lawyers who wanted to become judges”—indeed, Judge Carey notes that at one point, every judge in the Bankruptcy Court for the Eastern District of Pennsylvania had practiced in front of Judge Twardowski.

One day while Carey was at work in Reading, he got a call from Judge Twardowski, who was in Philadelphia meeting with the other bankruptcy judges in the district, asking him to come to Philadelphia because they had a question for him. Carey asked if they could just ask the question by phone, but Judge Twardowski said no; he needed to come to Philadelphia. Not knowing what to expect, Carey, then 27 years old, went to Philadelphia. He recalls that when he arrived, he sat at one end of the table and the judges sat at the other, and they offered him the position of clerk of the court. He asked for time to think about it, and “the judges seemed a bit taken aback that more time would be required to consider such a professional opportunity for such a young man.” Carey, taking in the “sense of the room,” then immediately accepted the job, which was in Philadelphia, where he eventually wanted to practice.

Carey spent one year as clerk of the court, which he describes as “a challenging job” because of the transition from the Act to the Code and an acute lack of funding for the newly reconstituted bankruptcy court. (Cases that had begun under the Act continued to be governed by the Act and its procedural rules, whereas newer cases were governed by the Code and its procedural rules.) He then joined the firm of Blank Rome in Philadelphia as only its second bankruptcy associate. He spent two years there, which he describes as “a great training ground,” and he credits the experience with teaching him to write well. He then moved to a small, suburban firm with a “city practice” in Bala Cynwyd, Pa., where he continued to do bankruptcy work but also branched out into commercial real estate, lending, and trusts and estates. From there, he moved to Hepburn, Willcox, Hamilton & Putnam LLP, a 25-lawyer “white shoe” firm in Philadelphia, where he did the same kind of work and eventually became managing partner.

For many years, Carey co-authored a weekly column for *The Legal Intelligencer*, the Philadelphia area legal newspaper, reporting on current bankruptcy law decisions by courts both within and outside of the Third Circuit.

In the 1990s, two bankruptcy judge positions opened

up in the Eastern District of Pennsylvania, and Carey seriously considered applying but decided it was “not the right time.” (Unlike other federal judges, who are appointed, bankruptcy judges apply to the Circuit Court of Appeals and are vetted by a merit selection panel.) He moved to Mesirow Gelman in Philadelphia, then to Fox Rothschild in Philadelphia.

In 2000, another bankruptcy judge position opened up in the Eastern District of Pennsylvania. Carey again considered applying, and this time was urged on by two friends and fellow lawyers who called him, unsolicited, and told him, “This is your time.” He agreed with his supporters that it was the right time, but spoke with his wife, Denise, to confirm that they could afford the pay cut if he were to leave private practice. Then he spent the Memorial Day weekend ruminating before making the decision to apply. Needless to say, he got the position and started his judicial career in 2001; Denise’s support of his career has been unwavering. He loved it right away.

After sitting in Philadelphia for nearly five years and presiding over primarily Chapter 7 and Chapter 13 consumer cases, Judge Carey got a fateful call from Hon. Mary F. Walrath, U.S. Bankruptcy Judge for the District of Delaware, with whom he attended law school and practiced for a time in Philadelphia. Delaware was a prominent venue for large-business Chapter 11 bankruptcy filings but had only two judges at the time. To help manage their overflowing docket, the District of Delaware established a “visiting judge program,” where bankruptcy judges from around the country would sit in Delaware periodically and preside over cases. Judge Walrath asked Judge Carey to be a visiting judge, and since he “loved trying stuff—can’t get enough of it” and was “always up for a challenge”, he agreed, was designated by the circuit, and spent one week a month in Delaware for one year. He enjoyed the cases and the lawyers who appeared before him, and after his tour of duty in Delaware was over, he kept all of his cases for which a Chapter 11 plan had not yet been confirmed and continued to hear matters in those cases in Philadelphia to provide continuity.

In 2005, Congress established four new bankruptcy judge positions in Delaware, which piqued Judge Carey’s interest due to the significant business practice there. He inquired about transferring from Philadelphia to Delaware but learned that he could not transfer—he would have to reapply. So he did, and went through the merit selection process all over again (though in this go-round, he was spared from another FBI background check). During his interview with the merit selection panel, he was asked, “If you liked Delaware so much, why did you leave?” He responded that he needed to focus on his primary practice in Philadelphia but that the prospect of a full-time Delaware judgeship presented a unique opportunity because he “loves the challenge that business cases represent.”

With the full-throated support of the Delaware bankruptcy bench and bar, Judge Carey got the position, and he started full-time in Delaware in December 2005. He lat-

er served as chief judge for three years. At his side is his career law clerk, Janet Moore, who has been with him for his entire judicial tenure. He describes Janet’s experience and consistency as “invaluable” to him, because he “always knows he can turn to her.” And by taking three to five externs per year in his chambers, Judge Carey has “the best of both worlds”—a long-time law clerk who knows him and future lawyers that he “can help train *and* learn from as well.”

Judge Carey’s approach to judging is simple. He says he “never has an agenda when on the bench,” “does the best he can do,” and is “always looking to issue balanced decisions.” His self-assessment is in line with the perception of the local bar, whose members regard him as a straight-shooter who calls things as he sees them. This is nowhere more evident, perhaps, than when he opened his magnum opus opinion in *In re Tribune Co.*, 464 B.R. 126 (Bankr. D. Del. 2011), by recounting the “Scorpion and the Fox” fable<sup>1</sup> as an “exposition of an inescapable facet of *human* character” evident in the conduct of the parties before him, i.e., “the willingness to visit harm upon others, even at one’s own peril.”<sup>2</sup>

Judge Carey’s term ends in 2019, at which time he will be 65. If he retires, perhaps he would have more time to enjoy reading for pleasure (he loves classic novels and spy novels). Or perhaps to indulge his inner “music nerd” by taking in some more concerts—as of our interview, he had just seen Diana Krall, whom he describes as “simply wonderful” in her ability to “take a classic, whether it was sung originally by the Beatles, Frank Sinatra, or the Mamas and the Papas, and make it great all over again.” His musical tastes are quite eclectic and range from jazz and some blues (old and new, from Etta James to Miles Davis to David Benoit and others) to Jimmy Buffet “and the island stuff” to country music (Kenny Chesney and Luke Bryan in particular) and to “what he thinks of as folk music” (including Livingston Taylor and James Taylor).

For the time being, Judge Carey shows no sign of slowing down. True to his mantra to “be involved,” he is currently booked to chair or attend conferences this year in London (twice); Bucharest, Romania; Zagreb, Croatia; and Shanghai, in addition to his domestic engagements. To say that Judge Carey is merely “avoiding isolation” would be an understatement—he is actively, and tirelessly, using his judicial office and his leadership positions both in professional organizations and in government to make bankruptcy practice, the legal profession, and the federal court system better. ☉

## Endnotes

<sup>1</sup>In the fable, the fox and the scorpion are bitter enemies who agree to work together to cross a vast river—the scorpion will show the fox the best place to cross if the fox agrees to let the scorpion ride on its back across the river. In the middle of the river, the scorpion stings the fox, dooming both of them, and stating: “It is better we should both perish rather than my enemy should live.”

<sup>2</sup>*Id.* at 135 (emphasis in original).