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Three-Way Mudfight Unleashed by DLA Piper's #MeToo Mess

As sexual assault, harassment and bias claims become more frequent in Big Law, tactics are evolving—and getting bolder.

By **Dan Packel** | October 24, 2019



Image: Shutterstock

It all started with a document that's normally under wraps.

Discrimination charges filed with the Equal Employment Opportunity Commission aren't confidential. But they're also not readily accessible to the public. Nonetheless, when now-suspended DLA Piper partner Vanina Guerrero decided to publicize sexual assault allegations against now-fired DLA Piper partner Louis Lehot, she and her lawyer did so in an open letter that appended her detailed EEOC claims against the firm.

As the three-way dispute has developed between Guerrero, DLA Piper and Lehot, airing normally private correspondence has become a defining strategy on all sides.

Wigdor LLP's Jeanne Christensen, representing Guerrero, has continued to post additional EEOC submissions and open letters on the website Medium.com. DLA Piper, facing criticism over its handling of Guerrero's claims, publicized the fact that Guerrero has been placed on administrative leave over allegations that she herself had engaged in harassment at the firm—a move first outlined in an internal firm memo. PR representatives for Lehot, who denies Guerrero's accusations, then leaked a tranche of purported emails from Guerrero showing friendly exchanges with him during the period of time in which she alleges he repeatedly assaulted her.

DLA Piper moved next, with an outside PR company providing four letters and emails the firm and its attorneys at Gibson, Dunn & Crutcher sent to Christensen. These communications aim to debunk Christensen's claims that she was completely in the dark as to why the firm suddenly suspended Guerrero.

"This is the future," said Wayne Pollock, managing attorney at PR firm Copo Strategies. "We're in an era now, thanks to what's going on in Washington, D.C., where there's more of an appetite for aggressive public statements."

Other law firms have landed in the spotlight since the #MeToo movement began spreading virally in October 2017, via dogged reporting, court fights initiated by attorneys and staff who have been allegedly victimized or discriminated against, and student protests. None has responded with guns blazing in the same way as DLA Piper.

The particular tenor of this battle is partly a factor of the firm's commitment to its mandatory arbitration policy. By denying Guerrero the chance to frame her accusations in a complaint in state or federal court, it's also ruling out the prospect of crafting its message through court pleadings. By comparison, Jones Day, which is currently fending off two well-publicized gender bias law suits, has been sparing in its direct communications with the press. Instead, it has used court filings to say that one claimant was fired for "poor judgment and immaturity" and that two others "struggled with basic tasks" and "received below-average reviews in four of her last five years" at the firm.

The impulse behind the firms' responses may be similar, however.

"Corporate defendants and law firms are tired of plaintiffs' attorneys controlling the narrative and controlling the news cycle," Pollock said.

The speed with which targets have lost public support since #MeToo gained momentum has also changed the calculus for the accused.

"At the time of the accusation is really the time that the guilty verdict of public opinion is entered," said Stan Steinreich, president and CEO of Steinreich Communications. "If you don't act fast to get on one side, the firm's reputation is going to be affected. That's the dramatic change over the past 18-24 months."

But from another perspective, the aggressiveness of DLA Piper and Lehot's responses, which have both taken different paths towards publicly discrediting Guerrero and her legal team, are a reminder of the days before #MeToo. Consider Bill Cosby, whose public fall from grace served as a prelude to the current era.

Gina Rubel, a lawyer and president of Furia Rubel Communications, noted that the entertainer and his attorneys initially sought to question the character of his accusers and turn the attack back on the women. But that approach faded as #MeToo took off.

"In the beginning of the #MeToo movement, we saw raw anger and emotion as woman after woman stood up and said, 'We will be silent no more.' Society was riveted," Rubel said in an email. "The truth of widespread sexual harassment and

misconduct was finally bubbling up and being recognized for what it was/is. The mantra was, 'Believe women.'"

The strategies now on display suggest that the pendulum may have swung back in the opposite direction, at least in some cases.

"While the audience was not going to listen to anything the accused men said two years ago, today, the 'deny/reverse attack' approach can gain traction because the audience is willing to entertain the counter argument," added Rubel, who, like Pollock, pointed to a contentious political environment where "whataboutism" is rampant.

"It's the same thing here. Many people do not want to believe that a big law firm attorney, or any other high-profile rainmaking attorney, did these things and treated women this way," she continued. "If they believe that he did, then they would have to take action, and that action might hurt them or their firm or their bottom line."

Lehot, who's currently out a job, has less to lose. By releasing a carefully selected set of emails from Guerrero, he clearly means to demonstrate there was plenty of warmth in the relationship.

"Of course, that doesn't tell the whole story," said Joshua Galper, a crisis manager and founder of law firm Davis Goldberg & Galper. "It's wise for any individual who's accused of these allegations to state they will cooperate with an investigation fully and take the allegation seriously. This individual took a different path."

Lehot did indeed comply with the DLA Piper investigation and initially refrained from commenting on Guerrero's allegations. But that changed after the firm went public with its own investigation into her conduct.

For DLA Piper, the risks are higher.

"At the end of the day, the facts won't matter," Galper added. "But the reputational taint will linger if they don't address this in a way that's transparent and communicate to their staff, clients and attorneys that they take these issues seriously."

That's not to mention the audience of elite law school students—some of whom have already picketed the firm's offices in three cities over its continued adherence to mandatory arbitration.

All through the fight, DLA Piper has yet to budge from its commitment to the policy, both generally and for the resolution of Guerrero's claims.

But its PR strategy could ultimately compromise its legal argument for sticking to arbitration, depending on the exact wording of the agreement.

Retired Philadelphia Court of Common Pleas Judge Gene Cohen, who now leads the alternative dispute resolution practice at Horn Williamson and focuses on intra-law firm disputes, said that courts should look askance at all efforts to force mandatory arbitration of law firm sexual misconduct claims. He noted that because lawyers are semi-public officials authorized to practice law by a state licensing agency, there's a public policy interest in openness. That's complicated by the firm's efforts to try its case in the media.

"A firm making public what possibly may be considered information detrimental to a claimant—and then, seeking refuge in a mandatory private arbitration where these comments can only be privately refuted—renders forcing such an arbitration unconscionable," he said in an email.

This article has been updated with additional details on Lehot's response.

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