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Takeaways From DLA Piper Partner's Sex Assault, Bias Battle

By **Braden Campbell**

Law360 (October 30, 2019, 7:42 PM EDT) -- A public battle playing out between BigLaw giant DLA Piper and a female partner who claims the firm sheltered a former practice group co-head who sexually assaulted her has both sides lobbing scathing accusations.

Partner Vanina Guerrero has aggressively courted the media over the last few weeks, **lambasting the firm** and recently ousted rainmaker Louis Lehot in an Oct. 2 blog post detailing her claims of sex discrimination and retaliation, and piling on with a steady stream of releases highlighting support from members of the legal community.

DLA Piper hasn't been shy about fighting back, announcing that it had put Guerrero on leave after an investigation into her claims showed she may have harassed a colleague, and also claiming **she encouraged Lehot's advances** to help her career.

Regardless of the outcome of Guerrero's U.S. Equal Employment Opportunity Commission charge against Lehot and the firm — or any court case that might ensue — the battle represents a novel shift in legal media strategy, experts say.

"The two sides are playing it out the way they think they can get the most, the maximum information out there and get the public's sympathy ... and get people fighting on their behalf," said legal marketing consultant Elizabeth Lampert, who runs an eponymous PR firm. "And I think that's new."

Here, Law360 looks at some takeaways from the ongoing war of words.

Technology Amplifies Accusers' Voices

Guerrero launched a broadside earlier this month, publishing an open letter on blog platform Medium and releasing a detailed supplement to a charge she had filed with the EEOC. She alleged Lehot assaulted her on business trips and that the firm punished her for complaining. She also urged DLA Piper leaders not to enforce her agreement to press her claims in arbitration, where she says she would not get a fair shake.

But Guerrero wasn't done. Days later, through her attorneys with Wigdor LLP, she highlighted a law student protest against DLA's use of arbitration agreements as well as a letter from former firm ethics counsel Leah Christensen sharply criticizing Lehot. Guerrero would later share an EEOC charge from an ex-DLA human resources representative claiming she was fired for crossing Lehot, and a second letter from Christensen, this time to the EEOC, describing Lehot as a "textbook bully."

In some ways, Guerrero is following the plaintiff-side playbook of drumming up pressure to get the firm to settle the dispute on the most favorable terms to her, said Wayne Pollock, an attorney-turned-media strategist who runs communications firm Copo Strategies.

By waging a public campaign, Guerrero is daring the firm to prolong the attacks, which can hurt its stature in the eyes of clients and would-be hires, he said. But Guerrero has applied her own twist to the formula by using public blog posts, which can gain traction online more readily than a news release, Pollock said.

"That's a perfect example of how attorneys and their clients, for very cheap and with minimal effort and minimal technology knowledge, can create grassroots campaigns," Pollock said.

Wigdor LLP attorney Jeanne Christensen, who represents Guerrero, said her goal with the campaign has been to put pressure on the firm not to enforce a contract forcing her client to arbitrate employment disputes with the firm, as Guerrero had sought in her initial open letter. She said Medium, which the firm has used before to publicize disputes, helps the message reach more people more quickly than a news release.

"The longer DLA keeps refusing to answer the question about whether it's going to enforce the arbitration [agreement], the more we have to ... keep the question out there," Christensen said.

Political Backdrop Raises the Temperature

Pollock said Guerrero has ramped up the typical rhetoric in her public communications, which he attributes to a coarsening of discourse emanating from Washington, D.C. But these aggressive attacks can be risky if they convince a judge to impose a gag order, and plaintiffs need to be careful about what they say about their adversaries in public, where attacks can give rise to defamation claims, Pollock said.

Lampert likewise chalked the tone of the dispute up to politics, adding that the #MeToo movement has emboldened women to call out their alleged harassers. If she were advising Guerrero's attorneys, she might recommend a similar strategy.

"But if I were working with the law firm who was in this situation, I would probably suggest [they respond] how they're responding," Lampert said.

For her part, Wigdor's Christensen said being defensive in litigation is "asking somebody to roll over you."

"If I'm going to represent somebody the best that they can be represented, then [going on the offensive is] really the only option," she said.

'Accusing the Accuser' Is on the Table

DLA has not taken the accusations lying down.

The day the news broke, the firm issued a fairly standard response: It acknowledged the accusations and pledged to take them seriously, and to "seek [Guerrero's] cooperation in our investigation." The next week, it cut ties with Lehot in another common move.

But things took a turn a few days later, when the firm announced it had placed Guerrero on leave after unearthing "serious issues" with her conduct toward colleagues while investigating her claims. The firm also accused Guerrero of stonewalling its investigators, and on Tuesday, the firm drew headlines with a letter to the EEOC saying Guerrero had "orchestrated" a relationship with Lehot to help her career.

DLA's public criticism of its accuser represents a departure from the standard playbook, which calls for employers accused of wrongdoing to be more contrite, said Michelle Calcote King, the founder of marketing firm Reputation Ink.

"It's a dangerous move for DLA to ... put the accuser on leave," King said. "Crisis PR 101 is to not ever seem like you're accusing the accuser, so that's surprising to me."

King said a few factors may have played into DLA's approach, including that the #MeToo movement has lost some of its momentum. While the rule when the movement first picked up was to "believe women," there appears to be more room for the accused to push back two years on, King said.

This approach may also be less tailored to the court of public opinion than the court of law, where the risks are more concrete, she said.

A representative for Lehot said his client denies the allegations, referring to **a statement** in which he accused Guerrero of "exploiting the #MeToo movement" by twisting their relationship. DLA's attorney, Katherine Smith of Gibson Dunn & Crutcher LLP, said the statements from Guerrero's camp are "long on rhetoric and short on actual evidence."

"The evidence disproving all of that rhetoric is contained within DLA's recent submission to the EEOC, and we encourage anyone to review that evidence before drawing any conclusions," Smith said.

DLA's Catch-22 Takes Center Stage

Yet DLA's aggressive defense is a double-edged sword, experts say.

It appears the firm "let a partner behave badly because of the size of his book of business," King said. If it's not publicly refuted, this perception that the firm has "a culture of impunity for top earners" may not sit well with female and minority attorneys during recruiting, she added.

Speaking out now allows DLA to mount its defense on its own timetable, without having to wait for a chance to file a legal brief that could come a year or more into litigation, Pollock said. In the interim, firms risk losing clients or lateral hires if they don't refute claims like Guerrero's.

"DLA Piper clearly is getting counsel either internally or from some knowledgeable, outside PR crisis firm that's telling them, 'Look, you've got to fight back ... you're going to have your reputation dragged through the mud,'" Pollock said.

But in attempting to undermine Guerrero's claims, DLA is showing that it's willing to tarnish the reputation of an attorney it once touted, Pollock said. That risks sending a different message to clients and would-be hires, he said.

"It borders on distasteful ... to run the bus over people who, before they brought claims against you, were people who were working for you and whom you were putting out to your clients as representatives of your firm," Pollock said.

--Editing by Philip Shea and Kelly Duncan.