5 Trends That Rocked The Legal Industry In 2019

By Michele Gorman

Law360 (December 19, 2019, 10:31 AM EST) -- From some law firms' hard-knuckle responses to discrimination lawsuits filed against them to the Big Four's ongoing creep into the legal sector, these were some of the moments and trends that shook the industry in 2019.

Firms' Aggressive Responses to Litigation

Bias claims brought by attorneys this year revealed how some shop leaders aren't afraid to fight when litigation is in play.

One of the most high-profile examples involves Jones Day. In April, a group of former associates with the BigLaw powerhouse came forward with a $200 million pregnancy and gender discrimination suit, accusing the firm of systematically underpaying women, devaluing the work of female associates and pushing out lawyers who have children.

Six months later, Jones Day, which is seeking to knock out the entirety of two of the women's claims in addition to excising other allegations, lodged a 125-page answer to an amended complaint from the women. The firm said that "most of the 'new' material is redundant, irrelevant, immaterial, or merely inflammatory," and that the women failed to add "a single well-pled factual allegation" to back their contention that the firm's managing partner, Stephen Brogan, used his authority in a discriminatory way.

Over the summer, two married former Jones Day associates alleged in a suit that the firm's parental leave policy discriminates against fathers. In its initial online response to the suit, Jones Day used words such as "legally indefensible" and "sensationalized" to describe the couple's views and claims.

The firm maintains that its policy is legal, accusing the couple of distorting its leave offerings in an October reply in support of its motion to dismiss the suit.

Generally, most companies would instead prefer to try to turn the page after one negative news cycle.

"You have to assume that a law firm that is taking that kind of an approach toward its current and former associates means what it's saying and understands the consequences," said Peter Romer-Friedman, counsel at Outten & Golden LLP. "There are a lot of employers out there that will never settle a case before litigation because they want to send a message to plaintiffs and plaintiffs lawyers that they can't just come for a quick settlement."

Meanwhile, Davis Polk & Wardwell LLP plans to "vigorously" fight a black former associate's race bias suit alleging it marginalized black attorneys, gave him bogus
performance reviews and fired him as punishment for complaining.

The attorney recalled in his suit having concerns about Davis Polk’s commitment to nurturing black attorneys.

“I was surprised to see how aggressive the firms seem to be in responding,” said Lauren Stiller Rikleen, a former law firm equity partner and president of the Rikleen Institute for Strategic Leadership. "It raises a question about whether this is a protective response [from the firms], rather than an open-minded willingness to hear concerns that can be unsettling, that predates the complaint."

For Rikleen, such suits speak to an "impossible road" that women and minorities walk when they expect firms to honor their promises about diversity. Senior leaders don't want to see that their own firm might have similar problems to those that exist elsewhere, she said.

"When a diverse associate then feels it is safe to speak up and identify internal challenges, the instinctive reaction among firm leaders is discomfort with the criticism," Rikleen said. "The psychology that takes over is to become self-protective, and instead of addressing the expressed concerns, they marginalize the people who raise them."

**Big Four's Progressive Slide Into Legal**

The Big Four accounting firms — EY, PricewaterhouseCoopers, KPMG and Deloitte — this year continued to expand into some of the services traditionally handled by law firms, and, according to London research firm Acritas, represented four of the five most well-known organizations other than law firms that provide legal services.

The Big Four, which cannot practice law in the U.S., have opened up firms in Europe and are inching their way into the county's legal market via acquisitions and joint ventures.

For example, piggybacking on a 2018 alliance it formed with U.S.-based immigration law firm Berry Appleman & Leiden LLP, Deloitte Legal in May launched a partnership with Epstein Becker Green for labor and employment law issues. The alliance provides the accounting giant access to the law firm's large cadre of employment attorneys to provide legal services to clients where it cannot due to strict regulations surrounding who can practice law in the U.S.

Jeremy Fudge, managing partner of Berry Appleman & Leiden LLP, told Law360 he expects that momentum to continue.

"I think the original thinking just a handful of years ago was, the Big Four are going to come in to the legal space and they're going to take over, they're going to win or they're going to take away from U.S. firms," he said. "I think what we've been able to show is that that's not necessarily the case."

He added, "The case very well may be that the Big Four look to just do alliances like this where the rising tide lifts all boats. Everyone can win; it doesn't have to be a zero sum game."

In another sign of the Big Four's creep into the industry, EY — formerly known as Ernst & Young — in February shared its plans to invest in technology and innovation for legal services. The firm planned to use artificial intelligence company Luminance across its global network for large-scale document review, specifically with mergers and acquisitions due diligence.

**Firms Merging Their Way to the Top**
Coming off the record pace of combinations in 2017, law firm merger activity started off slow in the first half of the year but picked up in the third and fourth quarters.

Between July and September, U.S. firms announced 38 new combinations. About a third of all deals shared in that period were among small firms of fewer than 50 lawyers, with the combinations confined to the same state or city. But there were also some deals among larger partnerships.

The biggest announced merger of the quarter was between Taft Stettinius & Hollister LLP, a "decentralized" 474-lawyer Midwest regional, and 135-lawyer Briggs and Morgan PA. The Briggs firm currently has three offices, two in Minneapolis-St. Paul and one in Denver. The deal, which goes into effect Jan. 1 and will create a firm with more than 600 lawyers, makes the Minneapolis office the largest for the combined firm.

At the end of October, two Midwest-based law firms — 240-attorney Lathrop Gage LLP and 155-attorney Gray Plant Mooty — announced that they had approved a combination.

Earlier in the fourth quarter, Dentons announced a three-way combination with two midsize Midwest law firms in what it said was the beginning of a planned expansion throughout the U.S., following the firm's July combination with a 113-lawyer New Zealand law firm.

A burst of news in mid-November about possible mergers among large law firms reflected an urgency across the industry to remain competitive, as 500- to 750-lawyer firms struggle to keep up with law's ever-burgeoning behemoths.

The discussed mergers between Atlanta-based Troutman Sanders LLP and Philadelphia-based Pepper Hamilton LLP, and between Minneapolis-based Faegre Baker Daniels and Philadelphia-based Drinker Biddle & Reath LLP would create the 14th and 10th largest law firms in the U.S., respectively.

While each of the combined law firms would have more than 1,000 attorneys, experts say the industry should expect more big merger announcements in the not-so-distant future.

"There are a lot of law firms out there. A lot of people are all chasing basically the same business," Jeffrey Lowe, global leader of recruiting firm Major Lindsey & Africa's law firm practice, told Law360 in November. "I think firms have come to the realization that rather than each competing separately, maybe with economies of scale we can capture more business by merging."

**More Concrete Diversity, Well-Being Standards**

It has been two years since law firms committed to the Mansfield Rule, which measures whether firms have affirmatively considered women and attorneys of color — at least 30% of the candidate pool — for leadership and governance roles, equity partner promotions and lateral positions. In 2019, corporate attorneys took significant steps with hard diversity targets and by advertising diversity as a top factor in hiring outside counsel.

This year, the Mansfield Rule went in-house, as top corporate lawyers from at least 22 companies agreed to pilot the new version. The yearlong initiative requires legal departments to consider at least 50% women, LGBTQ, racial and ethnic minorities and lawyers with disabilities for significant leadership roles and promotions internally and for their outside counsel ranks.

But their efforts didn't stop there in 2019. More than 240 general counsel and chief legal officers at major companies penned and signed an open letter vowing to redirect their substantial outside counsel spending to firms that promote partner classes composed of
lawyers who are diverse in race, color, age, gender, gender orientation, sexual orientation, national origin and religion, without regard to disabilities.

They were prompted to speak out after they witnessed a pattern of firms promoting "largely male and largely white" partnership classes, according to the letter.

The initiatives built on previously established diversity initiatives such as the American Bar Association's Resolution 113, which 24 general counsel from high-profile corporations first signed in September 2016 pledging to direct a greater percentage of their spending to diverse attorneys.

"It's not like this is something new, that no one has ever talked about these issues before and this was the first time," said Michelle Fang, chief legal officer of car-sharing company Turo, who spearheaded the letter. "But perhaps the impact of the climate being right for it, the number of companies banding together and speaking with one voice, the fact of where we are as a country, it makes me hopeful."

This year also witnessed strides on lawyer well-being, as BigLaw took steps in its burgeoning campaign to address mental health issues. Dentons and Kirkland & Ellis LLP have both added specialized wellness officers, Ogletree Deakins Nash Smoak & Stewart PC recently hosted an alcohol-free wellness welcome at an attorney retreat, and Morgan Lewis & Bockius LLP has rolled out weekly firmwide communications on well-being.

While they commend the industry's efforts on addressing mental health, experts warn that these measures are just first steps, and the industry will need to take more action to address its alarming rates of suicide and addiction.

**Nonlawyers Make Headway**

The legal industry appears to be increasingly opening its doors to nonlawyers, with a few states in 2019 introducing regulatory changes exploring nonattorney involvement.

The shifts taking place in the U.S. aim to open up the legal industry to greater participation from nontraditional players such as legal technology companies. In California, a public comment period on allowing more nonlawyer participation in the state's legal sector recently closed. A report from the California bar task force is expected early next year.

"I think that among the factors is a growing sense of populism and a growing sense of unfairness that needs to be balanced, wrongs that need to be righted," said Jordan Furlong, a legal market analyst and principal at Law21. "Very little of that is possible if people don't have access to the rights that they are entitled to exercise and the remedies that can flow from the exercise of those rights."

So far, reforms in California, Arizona and New Mexico are in the proposal phase. And in Utah, the state supreme court in August voted to pursue changes to its regulatory structure.

Under Utah's newly approved plan, an accounting firm could soon offer legal services in the state alongside its accounting services, a technology company could use artificial intelligence to help consumers complete legal documents, or a nonprofit could allow a paralegal to offer limited legal advice to clients without lawyer supervision.

In Illinois, the state is poised to launch an official exploration into opening up the legal profession to nonlawyers, in what some say could be a tipping point for such efforts to increase access to legal help.

The potential of these reforms to have a domino effect across the U.S. is real, and any
substantial change to the regulation of legal services in the country will have a global impact, Furlong said.

"You don't want to overstate the impact," he said, adding, "but it's hard to see how the reforms that are planned and that may go through, if they go through, won't have a sweeping impact."

--Additional reporting by Vin Gurrieri, Adam Lidgett, Aebra Coe, Emma Cueto and Natalie Rodriguez. Editing by Rebecca Flanagan and Alanna Weissman.

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