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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

4 Legal Ethics Cases To Watch In 2019

By **Andrew Strickler**

Law360 (January 1, 2019, 12:03 PM EST) -- Ethics experts hopefully got some rest over the holidays, because 2019 promises to be hectic, with a major conflict-of-interest case headed to trial in New York and major decisions springing from class action settlements expected to be handed down. Here are some of the big cases to watch in the new year.

Ex-Wife of Morgan Stanley Exec Takes On Blank Rome

In terms of conflict-of-interest allegations, this one is a whopper. Nearly **six years ago**, Kristina M. Armstrong, the ex-wife of a Morgan Stanley executive, first accused the firm of double-dealing her in her divorce proceeding.

At the heart of the suit is the claim that her attorney, Norman Heller, failed to tell her the firm was also representing Morgan Stanley in a \$400 million financing deal, concealed the value of securities licenses her estranged husband had received during the marriage, and then pressed her to forego her rights to a split of the value.

The failure to disclose the “debilitating” conflict — the husband was on the management committee of Morgan Stanley, a long-time Blank Rome client — constituted fraud, Armstrong has alleged, and ultimately cost her \$8.3 million in the divorce.

For New York lawyers, the case holds particular interest due to the inclusion of the so-called Section 487 claim, an old but difficult-to-prove statute that exposes lawyers who commit deceit on the court to triple damages. Including the 487 calculation, Armstrong values her suit at \$33 million. A state court in October **denied a defense call** for summary judgment; a mediation is expected to begin in January.

“This is the third time a court has held that both the malpractice and 487 claims are for the jury to decide,” said Armstrong counsel Eric Grayson. “Blank Rome is running out of road and is looking down the barrel of a case based on their deceit, concealment and callous disregard of a client’s rights and best interests.”

Counsel for the firm did not respond to a request for comment.

Kristina Armstrong is represented by Eric D. Grayson and James M. Kavanagh of Grayson & Associates, and Jonathan S. Sack and Eric Stern of Sack & Sack.

Blank Rome is represented by Philip Tuitou and Joseph G. Silver of Hinshaw & Culbertson.

The case is Kristina M. Armstrong v. Blank Rome LLP et al., case number 651881/2013, in the

Supreme Court of New York for New York County.

Labaton Sucharow Feels Heat Over \$4M Referral Fee

An unusual face-off between a federal court-appointed special master and plaintiffs firms over a \$75 million fee award promises more fireworks in 2019. And for professional responsibility experts, the so-called State Street fracas in Massachusetts has plenty to offer.

The dispute centers on the discovery of inflated fees and double-billing by plaintiffs counsel from a \$300 million class action settlement. That led to the revelation that Labaton Sucharow LLP had also paid a \$4.1 million payment from class counsel fees to a lawyer who referred the firm to Arkansas Teacher Retirement System, the lead plaintiff.

Along with the ethical risks of firms paying “bare” referrals to attorneys who don’t work the case, the post-settlement dispute has delved deep into the gray areas around what firm financial arrangements must be disclosed and the limits of a special master’s authority to call lawyers out for ethical breaches.

The underlying suit alleged that State Street swindled millions of dollars a year from its clients on their indirect foreign exchange trades over several years.

Heading into 2019, look for a decision from U.S. District Judge Mark L. Wolf on an unusual proposed “settlement” between Labaton Sucharow and the special master, retired U.S. District Judge Gerald Rosen.

In that deal, Rosen pulled back on his stance that the referral and the firm’s efforts to conceal it constituted intentional misconduct; Labaton Sucharow in turn agreed to **repay \$4.8 million** for the “nontraditional” payment and accept oversight from **another special master**.

“We are optimistic that the court will ultimately move forward in approving the settlement outlined by Special Master Rosen,” a Labaton Sucharow spokesperson said. “That includes his recommendation that our firm continue to serve as co-lead counsel for the customer class and that Arkansas Teacher Retirement System remain as lead plaintiff — recommendations that the special master reached after his more than yearlong review of the case.”

A representative for Rosen did not respond to a request for comment.

Labaton Sucharow LLP is represented by Joan Lukey and Justin J. Wolosz of Choate Hall & Stewart LLP and its own general counsel, Michael P. Canty.

Judge Rosen is represented by William F. Sinnott and Elizabeth J. McEvoy of Barrett & Singal PC.

The case is Arkansas Teacher Retirement System v. State Street Corp. et al., case number 1:11-cv-10230, in the U.S. District Court for the District of Massachusetts.

Litigation Funding, NFL Concussion Case Under Microscope

2018 was another banner year for private legal investors, with plenty of new money coming in, high-profile BigLaw hires and a smattering of funder-friendly court rulings. But all the news was not rosy for the growing litigation funding industry.

Amid a challenge by the Consumer Financial Protection Bureau and the New York state attorney general over alleged usurious deals, RD Legal Funding and other investors that had advanced

millions to NFL players in anticipation of payouts from the concussion settlement saw all their contracts voided by U.S. District Judge Anita B. Brody.

The New Jersey-based RD Legal later scored big wins **against the CFPB and the SEC**. But the controversial financier is still facing a major hurdle in the case as it leads the charge for funders in a Third Circuit appeal.

NFL class counsel Christopher Seeger of Seeger Weiss LLP, who was instrumental in getting the issue before Judge Brody, has called some of the claim assignment deals in the NFL case “out-and-out scams” on injured players and families in dire need of money.

Judges and plaintiffs lawyers need to “build in these anti-assignment provisions [in class settlements] so you don’t work for years and years litigating to recover a billion dollars for your client, then watch a bunch of greedy lending companies come in and eat that up,” he said at a recent legal conference.

“The appeal is important to the funding industry because it presents important questions of first impression regarding the scope of a district court’s jurisdiction when presiding over a class action settlement and class counsel’s ability to deprive putative class members of the ability to immediately monetize their future settlement proceeds through litigation funding agreements,” said RD Legal counsel Michael Roth of Boies Schiller Flexner LLP.

A hearing at the Third Circuit is set for Jan. 23.

The case is In Re: National Football League Players Concussion Injury Litigation, case number 18-1040, in the Third Circuit Court of Appeals.

Sheppard Mullin Conflict Disclosure Saga Continues

In the middle of last year, the California Supreme Court dropped a widely anticipated decision on conflicts of interest, the limits of advance waivers and the duty of disclosure to clients.

While the court was unanimous that Sheppard Mullin Richter & Hampton LLP violated its duty of loyalty to client J-M Manufacturing Company Inc. by not disclosing a recognized conflict when it sought an advance waiver from J-M, the decision offered little guidance on exactly what disclosures would have rendered the waiver enforceable.

The decision also **sent back to a trial court** the central question of whether Sheppard Mullin is entitled to any compensation, or how much, because the case took an “unwarranted detour to arbitration” under a firm-client agreement that should have been voided due to the conflict.

San Rafael, California, professional responsibility attorney Samuel Bellicini, who co-authored an amicus brief in support of Sheppard Mullin at the Supreme Court, said the ongoing case rightly has the attention of the attorney discipline bar.

He noted Chief Judge Tani Gorre Cantil-Sakauye, who oversees the discipline system and appoints some state bar judges, joined a dissenting opinion that Sheppard Mullin should not be in line for any quantum meruit recovery. That position could encourage bar courts to take a harder line with lawyers caught in conflicts and lead to tougher fee-based restitution orders.

“The fact that the chief justice weighed in on this, and went against the majority, will not go unnoticed in the state bar courts,” he said.

Sheppard Mullin is represented by Kevin S. Rosen and Bradley J. Hamburger of Gibson Dunn & Crutcher LLP and James Francis McShane of Sheppard Mullin Richter & Hampton LLP.

J-M is represented by Kent L. Richland and Jeffrey Edward Raskin of Greines Martin Stein & Richland LLP and Kinh-Luan Tran of KTL Legal Inc.

The case is Sheppard Mullin Richter & Hampton v. J-M Manufacturing Company Inc., case number S232946, in the Supreme Court of California.

--Editing by Philip Shea and Jack Karp.

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