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The Biggest Moments For Del.'s Legal Industry In 2021

By **Rose Krebs**

Law360 (December 9, 2021, 4:45 PM EST) -- For Delaware's legal community, 2021 marked another year of navigating the ongoing pandemic while also dealing with major judicial developments and trying to tackle an issue the state has long grappled with: bringing more diversity to the bar and bench.

Law360 Pulse looks back at some of the significant happenings in Delaware's legal industry in 2021, as the state's courts moved along busy caseloads, and in some instances returned to in-person proceedings.

A More 'Flexible' Way of Doing Business

When Delaware's courts this year lifted the judicial emergency declared in response to the COVID-19 pandemic and restarted jury trials and in-person proceedings, it became apparent things were not likely to return to how they were pre-pandemic.

Law360 Pulse

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Many firms in Delaware, as is the case across the nation, say a more flexible work environment in which attorneys might not report to the office five days a week will be a key facet of the post-pandemic workplace. Also, conducting some proceedings remotely, including certain depositions, will continue post-pandemic, attorneys told Law360 Pulse.

William M. Lafferty, executive committee chair of Delaware firm Morris Nichols Arsht & Tunnell LLP, said recently that although his firm has welcomed attorneys back to its Wilmington office, a flexible hybrid model will likely be in place moving forward.

"We keep wanting to say we are back to normal, but it is not 100%," Lafferty said. "We are not back to everybody here, every day of the week."

The firm is working on setting a long-term policy, with Lafferty anticipating attorneys will have flexibility to work from home some days.

"I think, for the most part, people want to be back in the office," he said. "The key word is going to be 'flexibility.' People can work effectively from their home. The past year has shown that."

Keith E. Donovan, managing partner and chair of the executive committee of Delaware-based Morris James LLP, said recently that his firm is also eyeing a hybrid model. Moving to more "normal" practices is going to mean flexibility to allow remote work, he said.

"I don't think the legal industry will ever return to pre-pandemic times," he added.

A key for moving forward under a hybrid work model will be ensuring the firm continues the culture of collegiality and camaraderie it had before the pandemic, Donovan said.

Dawn V. Sheiker, director of client relations at Morris James, said that serving clients' needs will continue to be a top priority in the "new hybrid world."

"I think we adapted well, and now it's time to perfect it," Sheiker said, stressing that client service must be consistent, whether proceedings are in person or remote.

Gregory V. Varallo, head of Bernstein Litowitz Berger & Grossmann LLP's Delaware office, said the transition back to in-person proceedings in the state's esteemed Chancery Court has gone smoothly. Varallo, an experienced corporate litigator, said the court didn't really miss a beat during the pandemic as it continued to move the docket along with virtual proceedings.

"It's been a mix lately," Varallo said of the court's handling of cases. "We are seeing some in-person hearings."

And Varallo said he is pleased people are getting back to court and the office, as he believes it is the best way for less-experienced attorneys to become good trial lawyers.

"A lot of the training of the next generation goes on in person, it just does," Varallo said. "No matter how many virtual [proceedings], you just learn more in person."

Lewis H. Lazarus, a partner at Morris James who also frequently litigates in Chancery Court, said he thinks the pandemic has permanently changed the way of doing certain things.

Although his firm was delving into technology for holding remote depositions before the pandemic, that practice is now so routine it likely is here to stay, he said.

"Lawyers and their staff have gotten more comfortable with doing depositions remotely," Lazarus said, and he anticipates the bulk of deposition discovery will continue to be done that way.

Delaware Judiciary Rolls Out New Diversity Initiative

In May, Delaware's chief justice **announced the launch** of a state judiciary initiative aimed at tackling an issue the First State has long struggled with: building more diversity in its bar and on its bench.

Chief Justice Collins J. Seitz Jr. said at the time that the Delaware Bench and Bar Diversity Project would be a collaborative effort of the judiciary, the National Center for State Courts and the nonprofit AccessLex Institute, which aims to help "talented, purpose-driven students find their path from aspiring lawyer to fulfilled professional," according to its website.

Justice Seitz said at the initiative's launch that "with Supreme Court Justice Tamika Montgomery-Reeves as a co-chair, we are going to study diversity issues in the Delaware legal community from top to bottom. We need to ensure the public is being served by a high-quality legal profession that reflects the diversity of our society."

The project is led by a steering committee that includes judicial officers, individuals and organizations. This week, Justice Montgomery-Reeves provided Law360 Pulse with an update on the initiative, saying a plan is set to be presented to the state Supreme Court in early 2022.

"The initial goal of the project is for the steering committee, NCSC and AccessLex to provide the Supreme Court with a strategic plan that includes specific goals to increase diversity in the Delaware bench and bar, and that includes proposed mechanisms by which we can measure that success," Justice Montgomery-Reeves told Law360 Pulse in an email sent by the judiciary. "I suspect the plan will have some recommendations that can be quickly implemented, and other recommendations that will have greater impact but will take longer to implement."

Among those serving on the steering committee are judicial officers representing each of the state's courts, representatives from the Delaware State Bar Association, Widener University Delaware Law School, Delaware State University, the University of Delaware, nonprofit legal aid organizations, various Delaware law firms, and the Administrative Office of the Courts, the justice said.

The steering committee is organized into five working groups "designed to examine specific areas and to enlist participation from community subject-matter experts to include a broad range of thinking and experience," including grassroots organizations, residents, activists, faith leaders and community leaders, the justice said.

Working groups focus on pre-college, college and law school, bar exam and licensing, the state bar association, and ways to increase diversity on the bench.

According to Justice Montgomery-Reeves, issues the groups aim to address include strategies that can be implemented to improve diversity, identifying the barriers to implementation, and how strategies can be implemented. The groups also are focusing on who will be responsible for changes and how the success of the strategies will be measured.

The working groups are in the process of finalizing preliminary recommendations, the justice added.

The NCSC and AccessLex have conducted a series of interviews with key stakeholders, including Gov. John Carney, members of the state's General Assembly, judiciary employees, members of the Delaware Board of Bar Examiners, and school administrators and teachers, the justice said.

Chancery Transitions After Bouchard's Departure

Delaware kicked off 2021 with **a looming vacuum** atop its nationally important Chancery Court, with the news that Chancellor Andre G. Bouchard was set to leave the preeminent corporate law bench in the spring.

In late December 2020, Bouchard, not quite seven years into his 12-year term, announced he was leaving the court, citing an interest in moving on after 34 years as either advocate or jurist in the state's globally known business law and equity court.

During his tenure, Bouchard penned some **significant decisions**, such as his 2016 ruling in **In re: Trulia Inc. Stockholder Litigation** , which set tougher standards for disclosure-only stockholder settlements. His 2014 decision in **In re: KKR Financial Holdings LLC Shareholder Litigation**  helped clarify the evolving law and precedent surrounding deals with investors who have, or are accused of having, controlling stakes in a business and sway over deals.

Also during his tenure, he oversaw the court bench when it expanded from five to seven judges.

"Chancellor Bouchard leaves behind a legacy of excellence in the quality of his decision-making, his skill, and in his administration of the court," said Lazarus, the Morris James partner.

Lafferty, the Morris Nichols executive committee chair, said that he had "nothing but incredibly high regard for the chancellor and his time on the bench."

Bouchard had to navigate "a pretty dynamic period" in corporate law and penned some key and impactful decisions, Lafferty said.

"He pushed for the expansion of the Chancery Court, which was a big thing," he added. "There are going to be real lasting benefits from his tenure. He's going to be missed."

Chancellor Kathaleen S. McCormick **succeeded Bouchard**, just two and a half years after **joining its bench** as a vice chancellor when it was expanded from five to seven judges.

Lazarus and Lafferty said the transition to new leadership in the Chancery Court has been seamless.

"The Court of Chancery remains a high-functioning court responsive to the needs of litigants and those who choose to incorporate in Delaware," Lazarus said.

"I know the court is in good hands," Lafferty said. "Chancellor McCormick is up to the task."

After the Delaware Senate **confirmed her in April**, Chancellor McCormick took over as the court's

top judge the next month, the first time in the court's roughly 230-year history that a woman has held the position.

Former Wilson Sonsini Goodrich & Rosati PC partner Lori W. Will was sworn in to the Chancery Court as a vice chancellor in May following **confirmation** by the state Senate, filling the vacancy created by Chancellor McCormick's promotion. Vice Chancellor Will is the fifth female judge in the court's history.

In October, **Bouchard joined** Paul Weiss Rifkind Wharton & Garrison LLP as a partner in its litigation department.

Delaware's Busy Federal Courts Facing Departure of 2 Judges

In another significant Delaware judicial development, President Joe Biden **nominated** U.S. District Judge Leonard P. Stark in early November to fill a pending vacancy on the Federal Circuit.

Judge Stark was sworn in as a district judge in 2010 and served as the district's chief judge from 2014 until this year. Given that Delaware has one of the nation's busiest patent courts, he frequently presides over and makes decisions on some of the most significant and high-stakes patent cases.

Biden tapped Judge Stark to fill the Federal Circuit seat held by Judge Kathleen O'Malley, who is retiring next year.

During a hearing last week, Judge Stark **faced relatively friendly questions** from the Senate panel tasked with advancing his nomination. Judge Stark stressed his handling of 63 patent trials among the 2,400 patent cases he has presided over, saying that will help make up for the trial court experience Judge O'Malley will be taking with her when she retires in March.

"Judge Stark is known as a consensus builder who works to find principled compromises," Sen. Tom Carper, D-Del., said when introducing Judge Stark to the panel. "In the years since his last confirmation by this committee, Judge Stark has served Delaware and the nation with integrity and distinction. He has the heart of a servant and the temperament to be an outstanding judge" on the Federal Circuit.

Sen. Chris Coons, Carper's fellow Democrat from Delaware, said he was "confident that Judge Stark will bring the same sort of open-mindedness, keen legal mind, outstanding character, and sterling work ethic to the circuit court that he has brought to his practice and to the District of Delaware bench."

Judge Stark's departure would leave a void in Delaware's federal bench, one of the busiest patent venues in the nation.

"Judge Stark is a wonderful colleague," U.S. District Judge Colm F. Connolly told Law360 Pulse on Monday in an email. "His departure from our court will be a huge loss for us but a great gain for the Federal Circuit."

Judge Connolly **took over** as the Delaware federal court's chief judge from Judge Stark in July.

Delaware's bankruptcy court also is set to lose one of its experienced judges next year, as it **was announced** in November that Judge Christopher S. Sontchi will leave the bench in June to serve as an international judge of the Singapore International Commercial Court, handling insolvency matters.

Judge Sontchi, who joined the Delaware bankruptcy court in 2006 and served as chief judge from 2018 until this year, has presided over many major Chapter 11 cases during his tenure, including Catholic Diocese of Wilmington, American Home Mortgage, Energy Future Holdings Corp., Visteon, Six Flags, Molycorp, Borden Dairy, Exide Technologies, Brooks Brothers and Eagle Hospitality, according to a court announcement.

Delaware's bankruptcy court, which is one of the busiest in the nation for commercial filings, welcomed two new judges this year to fill vacancies left by retirements. Judge Craig Goldblatt, a former partner in WilmerHale's bankruptcy and financial restructuring group, and Judge J. Kate

Stickles, formerly a member of Cole Schotz PC's bankruptcy and corporate restructuring department, **joined** the bench **in April**.

--Additional reporting by Jeff Montgomery and Britain Eakin. Editing by Orlando Lorenzo.

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