

Judge Implores State Street's Former Counsel To Testify

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Law360, Boston (May 29, 2018, 10:59 PM EDT) -- A federal judge in Massachusetts on Tuesday beseeched three former State Street attorneys in Ireland and the Netherlands to testify voluntarily at a fraud trial next week of a former executive at the bank holding company, in a last-ditch effort to avoid questions about the trial's fairness that could be fodder for appeal.

At a pretrial hearing in Boston, U.S. District Judge Leo T. Sorokin pressed for former State Street lawyer Sarah Lewis and onetime in-house counsel Krystyna Beck and Simone Paul to submit to questioning next week in the trial of former Executive Vice President Ross McLellan, charged with swindling foreign clients. McLellan's defense counsel, Martin Weinberg, has been chasing down the attorneys to question them in the criminal trial since they gave depositions to the [U.S. Securities and Exchange Commission](#).

"It strikes me that they ought to testify and that ought to carry some weight for them as lawyers who are members of the legal profession in their respective countries," Judge Sorokin said. "They're not U.S. lawyers, but they're lawyers and they're lawyers in countries that have similar legal traditions, which is a belief in the rule of law and the rules of evidence."

Weinberg has attempted to compel the attorneys' testimony through letters rogatory and foreign treaties, but those avenues have been rebuffed either by the foreign nation's courts or the [U.S. Department of Justice](#). The fact that there are overseas witnesses potentially relevant to the case and outside of Judge Sorokin's subpoena power could be of significance after trial, the judge said.

"It might not be a big issue when it's all said and done, but it might be an issue," Judge Sorokin said. "If those people were to testify, then that's a non-issue for us and a non-issue for them."

The attorneys' lack of participation could resurface in an appeal or retrial if McLellan is convicted by a jury, the judge indicated.

“It may be Mr. Weinberg’s interest to repeat, do-over, depending on how well the first one goes,” Judge Sorokin said. “But I think the rest of us would all like to do this once well and be done.”

Weinberg [told the judge](#) at a March hearing that he "desperately" needed to use special legal avenues to force people and agencies abroad to produce evidence. In a [show of sportsmanship](#), Assistant U.S. Attorney Stephen Frank pressed London police to deliver flash drives containing information to Weinberg’s associates and also reached out to the three former State Street attorneys.

All three attorneys declined to voluntarily submit to depositions.

“They each know something about the events that transpired here, they had some connection to it and they’re not subjects, targets or defendants, criminally or civilly, in any of these proceedings,” the judge said on Tuesday.

John J. Butts of [WilmerHale](#), counsel to non-party State Street, has acted as a liaison between the company’s former associates and the criminal proceedings. Judge Sorokin tasked Butts on Tuesday with relaying to the overseas attorneys his strong preference that they participate. Butts acquiesced, but said it may be in vain because all three attorneys already carefully considered the request and were “quite strong in their answer in that they were not interested,” especially the two former general counsel.

“There was some concern on their part about characterizations made about their testimony,” Butts said on Tuesday.

“They’re going to be characterized in pleadings whether they testify at trial or not,” Judge Sorokin responded, added that that’s all the more reason for them to speak on the record.

Judge Sorokin said in an order issued earlier this month that he [lacked authority](#) to force the federal government to invoke mutual legal assistance treaties, or MLATs, to compel the foreign testimony. The DOJ has declined to enforce the MLATs.

“We have stopped short of exercising the government’s rights under a mutual legal assistance treaty because we have been advised by our Office of International Affairs that

that's what to do," Frank said in court on Tuesday. "We have made some pretty extraordinary efforts to reach out to parties overseas."

"For the record, I didn't convene this hearing based on a conclusion that you didn't do it and therefore I need to do it," Judge Sorokin responded. "I convened this hearing because they're not coming, these three people, and I thought that — I was hopeful that, as lawyers presumably committed to the expeditious and proper administration of justice, these people who are not subjects or defendants would be prepared to voluntarily offer their testimony."

Jury selection is scheduled to begin on Monday to decide whether McLellan scammed overseas clients seeking to move or liquidate large portfolios, as prosecutors allege.

He is charged with conspiracy, wire fraud and securities fraud for allegedly overcharging at least six clients in 2010 and 2011, including government pension funds in Ireland and the U.K. and a sovereign wealth fund in the Middle East.

McLellan is represented by Martin G. Weinberg.

The government is represented by Assistant U.S. Attorney Stephen E. Frank and William Johnston of the U.S. Department of Justice.

The case is U.S. v. McLellan et al., case number [1:16-cr-10094](#), in the U.S. District Court for the District of Massachusetts.

--Editing by Pamela Wilkinson.