

# Ex-Dewey COO Not Likely to Be Called as Witness by Either Side



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Although Dewey & LeBoeuf's former chief operating officer, Dennis D'Alessandro, has been extensively cited at a trial against the firm's executives, he is not likely to be called to testify by either the prosecution or defense.

The Manhattan District Attorney's office has said it does not plan to call him as a witness, and the defense said it has been denied access to D'Alessandro and therefore has been unable to prepare him as a witness.

Prosecutors are in their third month of trial against ex-chairman Steven Davis, former executive director Stephen DiCarmino and former chief financial officer Joel Sanders, alleging they oversaw a fraudulent scheme to hide Dewey's true financial condition from creditors and investors before the firm's May 2012 collapse.

D'Alessandro left Dewey in 2011 and was not criminally charged. He testified before a grand jury and was given immunity.

In February, prosecutors turned over to the defense statements D'Alessandro made, including that he was unaware of inappropriate accounting and did not believe his colleagues were doing anything illegal ([NYLJ, March 5](#)).

D'Alessandro has been frequently mentioned at the trial. For instance, prosecutors have cited e-mails that D'Alessandro received or was copied on, including a November 2009 email from Sanders that said, "Keep in mind though that at these levels we will not have the cash to pay the partners by Jan. 31 since \$25M is fake income."

The defense, in [an Aug. 13 letter](#) to Acting Supreme Court Justice Robert Stolz, said "D'Alessandro is knowledgeable about material issues," including payments to retired partners. "D'Alessandro would be the only witness at the trial to provide testimony from the firm's side of the negotiation process."

D'Alessandro's attorney, Bruce Barket, told the Law Journal on Friday that his client didn't "have a dog in the fight," but his client's inclination is not to see the people he worked with and his friends go to prison.

"We've indicated that if Mr. D'Alessandro is subpoenaed by either side, he would testify truthfully as he did in the grand jury. So far we haven't received a subpoena by either side, and my understanding is that neither side wants to call him as a witness," said Barket, a partner at Barket Marion Epstein Kearon.

Assistant District Attorney Peirce Moser told Stolz on Aug. 11 that he did not plan to call D'Alessandro to the stand. [In court papers](#), prosecutors said they never suggested D'Alessandro knows about any of the issues in their case, and the record is clear that D'Alessandro has made statements unfavorable to the prosecution.

Davis' attorney, Elkan Abramowitz, a partner at Morvillo Abramowitz Grand Iason & Anello, said Friday that his request to meet with D'Alessandro in advance of trial testimony was rebuffed by Barket.

"It would be foolish for anybody to call a witness cold" and unprepared, Abramowitz said in an interview, "especially when we do not have access to his grand jury testimony."

Meanwhile, the defense asked Stolz for a missing witness charge, instructing the jury that an unfavorable inference may be drawn from the prosecution's failure to call D'Alessandro.

"The People have relied upon Mr. D'Alessandro's hearsay statements and his receipt of certain e-mails over the course of the trial in an attempt to prove that the defendants engaged in criminal conduct," the defense said in Aug. 13 court papers. "The People know that Mr. D'Alessandro would not testify in their favor if called, yet they have repeatedly led the jury to believe that he would."

But in a ruling from the bench Tuesday, Stolz said "it appears that D'Alessandro's testimony would be something of a mixed bag, both favorable to the People and favorable to the defense."

"It seems critical to me" that the defendants were advised of D'Alessandro's favorable statements, Stolz said. "A missing witness charge against the People would be singularly inappropriate

should the defense elect not to call D'Alessandro as a witness for fear that his exculpatory testimony might be accompanied by information unhelpful to these defendants."

Stolz also said he was not convinced D'Alessandro's testimony would add anything material. "And any general testimony he might give as to the operation of Dewey as an enterprise has already been laid out in extensive detail."

However, the judge said defense counsel could raise the issue in their closing statements.