

IADC Corporate Counsel College  
Thursday, April 11, 2024  
8:30-9:45am CST  
“Navigating State AG Issues: Tips From the Trenches”

**Program Description**

The panel will explore the modern role of state attorneys general, including “regulation through litigation” lawsuits. Former state attorneys general will provide insight into their experience regarding the interaction between AGs from different states and political parties. This presentation and panel discussion will explore the authority and priorities of state attorneys general including activity at the state and federal levels. The panel will also discuss when and how in-house or external counsel might engage with state attorneys general or otherwise navigate the current regulatory and political environment in the states.

**Moderator**

Ashley Garry, Viatrix, Indianapolis, IN USA.

**Panelists [Ashley to introduce]**

Hon. Lisa Madigan – Former Illinois Attorney General, Kirkland & Ellis LLP, Chicago, IL

Hon. Bill McCollum – Former Florida Attorney General, Dentons, Washington, DC

Hon. Greg Zoeller – Former Indiana Attorney General, Indianapolis, IN

**Background:**

State attorneys general (“AGs”) or (“AG”) are their state’s chief law enforcement officer – vested with broad authority to represent the public interest. In 43 states and the District of Columbia the Attorney General is popularly elected. In five states the Attorney General is appointed by the governor: Alaska, Hawaii, New Hampshire, New Jersey, and Wyoming. The Tennessee Attorney General is appointed by the state supreme court and in Maine by the state legislature. The current party composition of the state attorneys general is 24 Democrats and 27 Republicans.<sup>1</sup>

State attorneys general exercise their broad authority in several areas, including consumer protection, antitrust, and law enforcement.<sup>2</sup> In recent years, AG activity has increased in other areas including opioids, cybersecurity, healthcare, and litigation against, or defending, federal executive action.

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<sup>1</sup> The New State Attorneys General Profiles and Priorities: AG Report 2019, [Orricks-New-AG-Report-2019.pdf](#)

<sup>2</sup> The New State Attorneys General Profiles and Priorities, [The New State Attorneys General Profiles and Priorities \(orrick.com\)](#).

## State Actions

Generally, AGs act as a counselor to state government agencies and legislatures.<sup>3</sup> Specific responsibilities vary from state to state due to statutory and constitutional mandates, but often include:

- Issuing formal opinions to state agencies
- Acting as public advocates in areas such as child support enforcement, consumer protections, antitrust and utility regulation
- Proposing legislation
- Enforcing federal and state environmental laws
- Representing the state and state agencies before the state and federal courts
- Handling criminal appeals and serious statewide criminal prosecutions
- Instituting civil suits on behalf of the state
- Representing the public's interests in charitable trust and solicitations
- Operating victim compensation programs<sup>4</sup>

Notably, the AGs for Alaska, Delaware, and Rhode Island have the authority to prosecute any state criminal law violations in their state.

Unsurprisingly, given the broad scope of their duties, AG offices have multiple divisions and a considerable number of attorneys. For example, the Illinois AG offices contains the following divisions:

- Administration
- Child Support
- Consumer Protection
- Criminal Justice
- Environmental Enforcement
- Government Representation
- Policy and Legislative Affairs
- Public Access and Opinions
- Public Interest
- Solicitor General
- Violence Prevention and Crime Victim Services<sup>5</sup>

According to the Illinois AG, these divisions are staffed by approximately 450 attorneys specializing in 40 areas of law.<sup>6</sup> The Georgia AGs office, covers essentially the same areas of law

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<sup>3</sup> In-depth Analysis of the Role of State Attorneys General in the American Legal System, [StateAG.org](http://StateAG.org).

<sup>4</sup> What Attorneys General Do, [What Attorneys General Do - National Association of Attorneys General \(naag.org\)](http://WhatAttorneysGeneralDo-NationalAssociationofAttorneysGeneral(naag.org))

<sup>5</sup> Office of the Illinois Attorney General, Overview of Legal Divisions, [All Divisions \(illinoisattorneygeneral.gov\)](http://AllDivisions(illinoisattorneygeneral.gov))

<sup>6</sup> *Id.*

but is organized differently. There, the office contains five legal divisions, four “specialty” units, and an operations division:

- Solicitor Generals Unit
  - Regulated Industries and Professions Division
  - Commercial Transactions and Litigation Division
  - Criminal Justice Division
  - General Litigation Division
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- Government Services and Employment Division
  - Prosecution Division
  - Medicaid Fraud Division
  - Consumer Protection Division
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- Operations Division

In Georgia, an issue such as environmental litigation, which in Illinois has its own division, is covered under Regulated Industries.<sup>7</sup>

#### *Representative Actions*

#### **01.20.2024: South Carolina AG announces sentencing for securities and commodities fraud:**

- AG prosecutors obtained a guilty plea under the state’s Commodities Act following an indictment on 19 felony counts of securities fraud, commodities fraud, and other charges. The court sentenced the defendant to 10 years.<sup>8</sup>

#### **11.02.2023: Uber and Lyft to pay \$328M settlement to rideshare drivers for “stealing earnings.”**

- The settlements come as the result of multi-year investigations from the state attorney general's office into Uber and Lyft, which found the companies' policies withheld certain pay from drivers and prevented them from receiving some benefits available under New York labor laws.<sup>9</sup>

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<sup>7</sup> Georgia Office of the Attorney General, Organization of the Office, [Organization of the Office | Office of the Attorney General \(georgia.gov\)](#); *see also* [07.01.23 GA OAG Org Chart.pdf](#)

<sup>8</sup> South Carolina Office of the Attorney General, Press Release, January 24, 2024, [Attorney General Alan Wilson announces Anderson man sentenced for securities and commodities fraud - South Carolina Attorney General \(scag.gov\)](#)

<sup>9</sup> New York Office of the Attorney General, Press Release, January 20, 2024, [NY Attorney General announces \\$328M in settlement funds from Uber and Lyft for 'stealing earnings' - ABC7 New York \(abc7ny.com\)](#)

**10.25.2023: Jorge Rico-Ruvira found guilty of second-degree murder and child abuse. Rico-Ruvira faces 18 years in prison.**

- This case was prosecuted by Assistant Attorney General Jonathan Gardner and Jonathan Roehlk, Deputy District Attorney in New Mexico's 5th Judicial District.<sup>10</sup>

**01.09.2024 Four Star Realty to pay \$1M, end illegal tenant billing under agreement with Attorney General Phil Weiser.**

- Colorado Attorney General Weiser announced a settlement with Colorado property management company Four Star Realty, in light of numerous instances of the company illegally charging tenants for routine repairs and other services. Four Star agreed to pay the state just under \$1 million, nearly all of which will be earmarked for consumer restitution.<sup>11</sup>

**Multi-state Activity:**

Multi-state actions include any “coordinated litigation among two or more AGs against the same defendants.<sup>12</sup> The National Association of State Attorneys General (“NAAG”) traces this litigation approach back to 1907, when several AGS met in Missouri to discuss anti-trust concerns related to Standard Oil.<sup>13</sup> Multi-state litigation is a powerful tool, resulting in large settlements – or at times investigative warnings, including:

- In October 2023, A multi-state investigation led by Indiana and Vermont, and joined by 47 other states, resulted in a \$49.5M settlement with software company Blackbaud regarding a ransomware attack in 2020.<sup>14</sup>
- In May 2022, a coalition of state AGs announced a \$141 million settlement with Intuit that compensated Intuit TurboTax customers who paid for tax preparation services that should

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<sup>10</sup> New Mexico Office of the Attorney General, Press Release October 25, 2023, <https://nmag.gov/news-and-media/press-releases/2/>

<sup>11</sup> Colorado Office of the Attorney General, Press Release January 9, 2024, [Four Star Realty to pay \\$1 million, end illegal tenant billing under agreement with Attorney General Phil Weiser - Colorado Attorney General | Colorado Attorney General \(coag.gov\)](#)

<sup>12</sup> Multistate Litigation and Settlements, [Multistate Litigation and Settlements - National Association of Attorneys General \(naag.org\)](#)

<sup>13</sup> *Id.*

<sup>14</sup> Office of the Pennsylvania Attorney General, Press Release, October 5, 2023, [AG Henry Announces \\$49.5 Million Multistate Settlement with Blackbaud for Data Breach that Impacted Millions of U.S. Consumers – PA Office of Attorney General](#)

have been free for them. Approximately 4.4 million consumers nationwide received a payment.<sup>15</sup>

- In December 2023, Google settled entered into a \$700M multistate settlement with state AGs to resolve allegations that the company violated state and federal laws by monopolizing the Android smartphone application. The multistate coalition of attorneys general sued Google in 2021 alleging that Google unlawfully monopolized the markets for Android app distribution and in-app payment processing.<sup>16</sup>
- Recently, Publicis Health agreed to pay \$350M over claims it assisted Purdue Pharma in the opioid crisis. The AGs claimed that Publicis developed “predatory and deceptive marketing strategies for Purdue.” This was the first settlement with an advertising company related to the opioid crisis.<sup>17</sup>
- In 2023, a coalition of 22 state Attorneys General, led by Iowa Attorney General Bird, sent a letter to International Shareholder Services (ISS) and Glass Lewis, two major Wall Street advising companies, urging them to “follow the law and quit recommending woke investment strategies that jeopardize millions of Americans’ retirement security.” The letter criticizes the two companies’ position that banks should not have to disclose their reasoning when they close a bank account.<sup>18</sup>

## **Federal (Political) Activity**

In the last 20 years, State AGs have increased their political participation at the federal level, often filing lawsuits to constrain the executive actions of the opposing party. For example, in 2017, then President Trump signed executive orders suspending immigration to the US from certain countries, including six predominantly Muslim countries. The Democratic AGs of 16 states and the District of Columbia sued, asking the courts to halt these so-called “travel bans.”<sup>19</sup> In fact, during the first

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<sup>15</sup> Intuit Multi-State Settlement, Press Release, Last Updated December 2023, [Home \(agturbotaxsettlement.com\)](https://www.intuit.com/press-releases/intuit-multi-state-settlement)

<sup>16</sup> Office of the California Attorney General, Press Release, December 18, 2023, Attorney General Bonta Announces \$700 Million Settlement with Google for Monopolizing Android App Distribution | State of California - Department of Justice - Office of the Attorney General

<sup>17</sup> Publicis Health Agrees to \$350M Settlement Over Claims it Helped Purdue Pharma Fuel Opioid Crisis, <https://abcnews.go.com/US/publicis-health-agrees-350m-settlement-claims-helped-purdue/story?id=106880427>

<sup>18</sup> Crowell & Moring LLP, [State AG Blog - A Blog from Crowell & Moring LLP](https://www.crowellmoring.com/blog/state-ag-blog-a-blog-from-crowell-moring-llp)

<sup>19</sup> President Trump Signs New Immigration Executive Order, <https://www.nbcnews.com/politics/white-house/president-trump-signs-new-immigration-executive-order-n724276>; <https://apnews.com/article/0dd0065f7dcb4e8098a56cf7789c4343>

two years of the Trump administration, Democratic AGs filed approximately 50 lawsuits, challenging that administration's actions regarding the environment, education, and healthcare.<sup>20</sup>

During the Obama administration, Republican AGs filed approximately 100 partisan briefs. These covered many of the same issues tackled by Democratic AGs, immigration, health policy, and immigration.<sup>21</sup> During this time period, one Republican AG stated, "I go into the office, I sue the federal government and I go home."<sup>22</sup> Interesting to note, that during the Clinton administration, it is estimated that Republican AGs filed only 5 partisan briefs with the U.S. Supreme Court.

The trend has continued into the Biden administration, as Republican AGs sued the administration 14 times within the first 9 months of the administration.<sup>23</sup> The public should expect AGs from both parties to act as a check, at least for their particular base or constituency, on the actions of the executive.

## Engagement

State AGs are active across industries and at various levels of government. In-house and external counsel should create an engagement strategy calibrated to their organization's need and future plans. This panel will explore in further detail the activity described above, including how state AGs prioritize investigations and litigation. In addition, the panel will include a discussion as to how the federal and political priorities of the state AGs might affect a company's approach to the AG – or that AGs approach toward the company.

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<sup>20</sup> Democratic AGs sue Trump at Record Pace, [Democratic AGs sue Trump at record pace | The Hill](#) (noting the Democratic AGs lawsuits challenging the EPA's roll-back of Obama-era environmental rules, the Secretary of Education's changes to student loan rules, and proposed actions related to the Affordable Care Act from the Department of Health and Human Services.)

<sup>21</sup> Governing, For the People Making Government Work, <https://www.governing.com/now/how-state-ags-became-a-check-on-the-president>

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*