

State AGs Highlight Changes to NAAG and Multistate Enforcement for 2023

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At last week's National Association of Attorneys General (NAAG) Capital Forum, consumer protection multistate investigations and enforcement actions were once again a subject of discussion. In a session specifically on the topic, NAAG Consumer Protection Committee Co-Chairs Generals Kwame Raoul of Illinois and Jonathan Skrmetti of Tennessee, as well as Susan Ellis and Jeff Hill, long time top consumer protection staff in their respective offices, spoke at length about the multistate process, responding to alleged misinformation about consumer protection multistates that has been reported through media and elsewhere.

The panelists started with the basics by explaining that a multistate is simply two or more states voluntarily working together on a matter of common interest with the main benefits of participating being to share resources and expertise. This creates the ability to take action that an individual state might otherwise not be able to do. An important point made multiple times throughout the session was that each state is a sovereign tasked with doing what is best for their respective jurisdictions, and each sovereign can leave a multistate at any time. The panelists provided some history of multistates, including the Standard Oil matter from the early 1900's, and mentioned one of the first consumer protection multistates from the late 1970's regarding General Motors.

While multistates can have many positives from both the state and business side, they often have the negative attribute of being very slow, which the panelists explained can be caused by different factors including lengthy confidentiality agreement negotiations, and disagreements not only between the states and the business, but also among the states themselves. Other factors they identified include differences in state laws, time necessary to review what is often a large amount of documents, other related actions such as by local jurisdictions affecting the state matter, and finally, perceived delay tactics sometimes used by defense counsel. In regard to remedies sought by the states, the importance of consumer restitution was highlighted, including the historical recovery of restitution in matters. The panel also discussed reasons why consumer restitution may not be sought in a state matter, including when consumers were already made whole through a federal or private action.

In regard to NAAG, the panel expanded on the organization's role in consumer protection multistates. They noted that in the media information about the organization often seems to be conflated with activities of NAAG's members. In regard to consumer protection multistates, panelists explained that NAAG serves in an administrative capacity only, and has no decision-making authority regarding who is the subject of an investigation or how an investigation should be pursued or resolved. Discussion also ensued about grants available to attorney general offices for consumer protection matters and who controls those grant funds. Per the panelists, NAAG staff only serves in

an administrative role while bipartisan groups of attorneys general review and determine who receives grant funds. Tom Miller, Iowa Attorney General and the outgoing NAAG President, made this same point during the Forum, citing a great amount of misinformation about the grant funds and false statements about how grant approval voting has become partisan.

In addition to correcting misinformation, NAAG members are looking hard into how it is organized with many calling for change to the association in the past year. One major change that was implemented during the Capital Forum was in relation to the succession of the NAAG Presidency. Prior to the change, the succession was based on a regional structure, as regional representation took precedence when the former rules were put into place. This created a string of presidents from the same political party, including three Republicans in a row from 2017 to 2020 and two Democrats in a row from 2021 to 2022, with Attorney General Josh Stein of North Carolina slated to be the third in the Democrat string. Attorney General Stein agreed to bypass his presidential year however, jumping from President-elect to immediate Past-president (and allowing him to joke that he now holds the record for the shortest term of NAAG president in history). Now, the presidency will alternate political parties each year, with Ohio Republican Attorney General Dave Yost receiving the gavel pass at the Forum, and now serving as NAAG President. Each president chooses an initiative, and Attorney General Yost announced his will focus on the military and veterans.

Outgoing NAAG President Miller reflected at the Forum on his efforts to bring people together and create balanced programming, which was noticeable at this Forum with sometimes heated discussions on panels covering controversial topics such as ESG. Attorney General Miller is the longest serving attorney general in history, with forty years of service under his belt, and was labeled by many throughout the Forum and throughout his career as a true statesman. James McPherson, former NAAG Executive Director, former U.S. Under Secretary of the Navy, and a retired U.S. Navy Admiral thanked General Miller for his years of service and then moved his keynote focus to the current status of NAAG.

Per Admiral McPherson, NAAG is facing a challenge, with [some members having withdrawn from NAAG](#). He stated that he will not judge the merits of the reasons members have withdrawn, but noted that perception is reality, and that efforts to bring back members who left must address the perceptions they based their leaving on. In regard to competing organizations, he noted that each has unique and valuable opportunities, and that it is not a zero sum game, with each organization able to do things that the others do not. Admiral McPherson emphasized to the attorneys general that NAAG is there to help them serve their constituencies, meet their goals, and ensure the rule of law.

While it remains to be seen whether these messages and reforms will be enough to reunite the states, we anticipate that 2023 will see continued efforts from NAAG to implement further reforms to create a more balanced organization. Also important will be how AGs continue to evaluate the multistate process in response to public criticisms, and whether such criticism will lead to more individual state investigations and suits. As the enforcement community continues to define terms like “dark patterns” and identify proper data security practices, fractures among the states can have the negative effect of creating multiple, competing definitions with uncertainty for those trying to comply. We will continue to monitor these developments throughout 2023.