

**Role of the Attorney General
University of Florida College of Law
Syllabus: Spring 2020**

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Former Florida Attorney General (2007-2011)

Note: Syllabus is subject to change depending on developing issues and the schedules of visiting speakers.

Meeting Time and Location

Monday, Tuesday, Wednesday, Thursday, Jan. 6 - 9, from 9:00am - 12:00pm

Friday, Jan. 10, from 9:00am - 11:00am

Classroom: Holland Hall 284

Required Texts

Emily Myers, State Attorneys General Powers and Responsibilities (2018) (Fourth Edition), published by the National Association of Attorneys General (NAAG). This book may be purchased online at the NAAG website in paperback or hardcover. Students will be expected to have acquired this book and read the assigned chapters for the first three class periods prior to attending the first class.

Gilbert King, Devil in the Grove (2012) Harper Collins.

Students are urged to read Devil in the Grove before the compressed course week begins. It will be the basis for the civil rights class discussions. Gilbert King's follow-on book, Beneath the Ruthless Sun (2018) Riverhead Books, is highly recommended reading, but optional for this course

Learning Outcomes

After completing this course students should:

- understand the powers and duties of state attorneys general;
- know the relationship of attorneys general with federal and state government;
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- be aware of the role of AGs in consumer protection, antitrust, criminal law, litigation, issuing legal opinions, non-profit governance and civil rights;
- have a working knowledge of current policy and legal issues being addressed by AGs from participation with other AGs in multistate investigations to filing amicus briefs to promoting specific legislation;
- know and understand uniquely Florida AG responsibilities including service on the Florida Cabinet, educating state and local government entities on the requirements of Florida's Sunshine Laws, appointing and working with the Statewide, Prosecutor and handling all appeals from state court felony convictions.

Canvas

I will use Canvas to post documents related to this course.

Class Participation

Twenty-five percent (25%) of your final grade will be based on your class participation. Each day I expect that you will have read the assigned materials and that you will be prepared to discuss those materials. Class assignments are in the syllabus following each class description. If assigned material is followed by "(review)" you will only be expected to scan the material. Otherwise you will be expected to have read it. There may be case studies and problems that we will evaluate together. The expectation is that you will be prepared to meaningfully participate in each of those case studies and problems. There will be several guest lecturers, and you will be expected to be prepared and participate in interaction with and questions for the guest.

Office Hours

I will arrange to be available by appointment. I encourage students to call or email me if you are having difficulties with, or simply want to clarify your understanding of, any of the materials covered in the reading or class. My cell number is 407-353-4640. My email is bill.mccollum@dentons.com.

Common Courtesy

Please do not arrive late to class, leave early, or leave to take a break during class absent extenuating circumstances. Please turn off your cell phone during class. I reserve the right to deduct points from your final grade if you engage in behavior that disrupts the learning environment for your classmates.

Class Attendance Policy

Attendance in class is required by both the ABA and the Law School. I will pass around an attendance sheet at the beginning of each class period. If you miss more than two classes, your grade for the semester may be adversely affected. If you have a medical reason for missing class, you should contact me before or soon after class for your absence to be excused. Students who miss class for religious holidays must contact me beforehand by email to be excused from

class. I will consider it a violation of the honor code if you have someone else sign you in and you are not present, and I reserve the right to lower your final grade.

Evaluation

75% of your grade will be based on a final typewritten paper of no more than 5,000 words on a topic to be assigned the final class period. It will be a research and analysis paper, not an exam. You will be asked to submit it to me by email. The paper will be due at least a week after the last class and no later than two weeks after the final class. The other 25% of your grade will be class participation as discussed above.

Information on UF Law Grading Policies

The Levin College of Law's mean and mandatory distributions are posted on the College's website, and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

Academic Honesty

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

Statement Related to Accommodations for Students with Disabilities

Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean

Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

Online Course Evaluation Process

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

Course Workload and Class Preparation

Students should expect to spend at least two hours outside of class reading and preparing for every hour of class. Due to the compressed nature of the course the Gilbert King book, Devil in the Grove, should be read before the course begins as well as the lesson readings for the first three class periods. The readings listed after the class descriptions are required unless “(review)” or “(recommended)” appears at the end of the listing. “Review” means you will be expected to have scanned the listed case, document, or article to be familiar with it for class discussion, but you will not be expected to have read it so as to know all its details. Difficult to locate articles or documents will be posted on Canvas the day before the class for which the assignment pertains if not sooner. Highly relevant court decisions or articles that appear after the syllabus is posted may be added. Students will be expected to check Canvas for additions or changes in reading assignments before the course begins and each day of the course week.

Introduction

This Syllabus is for a one week, one credit, compressed course to be taught January 6 -10, 2020. It contains federal and state statutes and case law, descriptive articles from a variety of sources, and hypotheticals that describe the nature and function of the Office of State Attorney General with special emphasis on the Office of the Attorney General of Florida. Select chapters or pages from the course textbook will be assigned for some, but not all, class hours.

The roots of the Office of State Attorney General run deep in American jurisprudence. All thirteen American colonies had an attorney general and today all fifty states and the District of Columbia have opted for providing legal services through an office of state attorney general.

Each office possesses extraordinarily broad jurisdiction and to varying degrees is independent from the executive branch of state government. Attorneys general in forty-three states are elected statewide on a partisan basis. The sweeping jurisdiction and constitutional independence has given rise to a unique American legal institution of growing importance.

The course will cover the day to day challenges faced by attorneys general and their staffs in delivering high quality legal advice that will guide state and local governments in a constitutional and ethical manner. The course also will cover the relationship of attorneys general with the federal and state governments, the private bar and a myriad of advocacy organizations. It will

focus on some of the most controversial of legal issues - challenges to the constitutionality of the Affordable Care Act; climate litigation; opioid litigation; criminal justice reform; gun rights/control; and cannabis laws and driving under the influence of cannabis to name a few. In addition it will examine Florida's unique Cabinet System where the attorney general shares powers with the governor and two other statewide elected officials with regard to a number of state agencies and boards.

Although each state is unique, the course will demonstrate the remarkable congruence that exists among state attorneys general when addressing similar challenges and issues. Unlike private and other government lawyers who work subject to ethical rules that defer decision making to agency "clients," for the 13,000 men and women lawyers in offices of state attorneys general it is representing the "public interest" that is the day to day reality of their professional lives.

Jan. 6 - Period 1

The Authority and Role of the Attorney General

This first class period explores the nature of the authority and culture that pervades offices of attorney general. The origins of the office of attorney general from England through the colonies and the states will be examined. Florida constitutional and statutory provisions related to the powers and authority of the attorney general will be reviewed and discussed. The significant common law powers of the attorney general that remain today will be a focus of this class period

1. Emily Myers, State Attorneys General Powers and Responsibilities (2018) (Fourth Edition), published by the National Association of Attorneys General (Chapters 1-3, Edited)
2. Florida Statutes, Title IV, Chapter 16 (2019)
3. Richard P. Leyoub and Theodore Eisenberg, "State Attorney General Actions, the Tobacco Litigation, and the Doctrine of Parens Patriae." Tulane Law Review, June, 2000 - Link: https://heinonline.org/HOL/Page?handle=hein.journals/tulr74&div=58&g_sent=1&casa_token=&collection=journals
4. State of Florida v Exxon Corporation, 526 F.2d 266 (5th Cir. Ct. App 1976)
5. State of Arizona, ex rel. Mark Brnovich, Attorney General v. Arizona Board of Regents, Ct. of App of Arizona, Div. 1, No. 1 CA-CV 18-0420, Memorandum Decision, Aug. 20, 2019
6. State of Arizona ex rel. Mark Brnovich, Attorney General v. Arizona Board of Regents, Petition for Review, Arizona Supreme Court, filed Sept. 18, 2019
7. State of Arizona ex rel. Mark Brnovich, Attorney General v. Arizona Board of Regents, Response to Petition for Review, Arizona Supreme Court, filed October 18, 2019

8. Diana Novak Jones, “Ballot Measure Can’t Legalize Pot, Fla. Legislators Say,” Law360 (Nov. 4, 2019) - Link: <https://www.law360.com/articles/1216726/ballot-measure-can-t-legalize-pot-fla-legislators-say>

Jan. 6 - Period 2 -

Structure of the AG Office and Litigation

Special Guest: Florida Supreme Court Justice and former Florida Chief Deputy AG Carlos Muniz. Discussion of the organization and structure of the office of the Florida Attorney General; the role of the Chief Deputy; how investigations are begun; how and by whom decisions are made; relationships with the Governor and state agencies and boards; litigation - representing state agencies and the public interest. The question “Who is the client?” will be explored as will the ethics of client representation. The long running Florida litigation against Georgia over water will be examined.

1. Myers, Emily, State Attorneys General Powers and Responsibilities(2018) (Fourth Edition), Chapter 4
2. Florida v Georgia, 585 U.S. ____ (2018) (June 27, 2018 decision) (review)
3. Robert Barnes, Supreme Court Justices Wade into Florida-Georgia Water Fight, The Washington Post (January 8, 2018) - Link: https://www.washingtonpost.com/politics/courts_law/supreme-court-justices-wade-into-florida-georgia-water-fight/2018/01/08/89b61f18-f4aa-11e7-a9e3-ab18ce41436a_story.html
4. Ledyard King, Supreme Court Sides with Florida in Decades-long Dispute with Georgia over Water Rights, USA Today(June 27, 2018) Link: <https://www.usatoday.com/story/news/politics/2018/06/27/supreme-court-sides-florida-dispute-georgia-over-water-rights/709578002/>
5. Georgia v. Florida, Report of the Special Master, Dec. 11, 2019, No. 142, Original, U.S. Supreme Court
6. Florida v. BP, et al , U.S. Dist. Ct., Northern Dist. Of Fla., Panama City Div., Case No.: 5:13-CV-00123 , Complaint (filed April 20, 2013) (review)
7. Settlement Agreement Between Gulf States and the BP Entities (filed October 5, 2015) (review)
7. Deepwater Horizon Response Timeline
8. Deepwater Horizon Oil Spill Settlement Fact Sheet - October 5, 2015 (Office of the Florida Attorney General)

9. Gulf Environmental Fund: Five Year Report, 2013 -2018 (review)
10. myfloridalegal.com (go to web page, click on “About the Office” and review each of the listed departments, programs and services by clicking on the links to each)
11. John W. Suthers, “A ‘Veto’ Attorneys General Shouldn’t Wield,” The Washington Post, Feb, 2, 2014 (copy posted on Canvas)
12. Mark Herring, “Herring: My Shift on Same-sex Marriage,” USA Today, Jan. 23, 2014 (copy posted on Canvas)
13. Trip Gabriel, “Move for Gay Marriage Gets a Lift in Pennsylvania,” The New York Times, July 11, 2013 (copy posted on Canvas)
14. Matt Apuzzo, “Holder Sees Way to Curb Bans on Gay Marriage,” The New York Times, Feb. 24, 2014 (copy posted on Canvas)
15. Iowa Solicitor General Jeffrey S. Thompson letter to Victoria Newton, Executive Council, Iowa State Capitol, May 15, 2018 (copy posted on Canvas)

Jan. 6. - Period 3

Consumer Protection

Since the passage of Unfair and Deceptive Practices Acts (UDAP) in the late 1970s, all state attorneys general have responsibility in the area of consumer protection. This is usually considered to be the “white hat” division, fighting scammers and businesses that make misrepresentations or otherwise engage in unfair or deceptive practices that could be harmful to consumers. Students will be asked to visit the websites of two or three AGs before class and identify and be prepared to discuss one consumer protection action of note. There will be a discussion of what is “unfair” and what is “deceptive.” There will also be a discussion of remedies including Assurances of Voluntary Compliance.

1. Henry N. Butler & Joshua D. Wright, Are State Consumer Protection Acts Really Little FTC Acts, 63 Fla. L. Rev. 163 (2011) (review) - Link: https://heinonline.org/HOL/Page?handle=hein.journals/uflr63&div=8&g_sent=1&asa_token=&collection=journals
2. Florida Statutes Title XXXIII, ss501.201 - 501.213 (Florida Deceptive and Unfair Trade Practices Law)
3. Office of the Attorney General, State of Florida v. Billotti, et al., 4th DCA FL, (Feb. 20, 2019), Case No. 4018 - 1645

4. State of Florida Office of Attorney General, In the Matter of Cingular Wireless LLC, Assurance of Voluntary Compliance, Feb. 28, 2008
5. News Release “McCollum Retrieves Millions for Florida AT&T Wireless Customers Billed for “Free” Ringtones,” Feb. 29, 2008
6. The States of Arizona, et al v. Medical Informatics Engineering, Inc, Consent Judgment and Order, U.S. District Ct , No. Dist. Indiana, South Bend Div., Case No. 3:18-cv-969-RLM-MGG (May 28, 2019) (review)
7. Office of the Attorney General, State of Florida v. Equifax, Final Judgment and Consent Decree, 17th DCA FL (July 18, 2019), Case No. 19 - 015227 (review)
8. Emily Myers, State Attorneys General Powers and Responsibilities, Chapter 13, pp 247-288

Jan. 7 - Period 4

AGs and U.S. Supreme Court Practice

Special Guest: Florida First District Court of Appeals Judge and former Florida Solicitor General Scott Makar. Other than the U.S. Solicitor General, state government is by far the most frequent litigant in the U.S. Supreme Court. This class will study states’ practice before the U.S. Supreme Court, including the important role played by attorneys general submitting amici curiae briefs. It will also explore the rise and growth of the office of Solicitor General in state AG offices. And there will be a discussion of the role of the Florida AG in all appeals of felony convictions in the state.

1. Kevin C. Newsom, “The State Solicitor General Boom,” 32 Appellate Practice J. 6 (2013)
2. Rachel E. Nordby, “Florida’s Office of the Solicitor General: The First Ten Years,” 37 F.S.U. L Rev. 215 (2009); S. Makar, “introductory Remarks,” 37 F.S.U. L. Rev. 216 (2009)
https://heinonline.org/HOL/Page?handle=hein.journals/flsulr37&div=10&g_sent=1&casa_token=&collection=journals
<https://heinonline.org/HOL/Page?handle=hein.journals/flsulr37&id=217&collection=journals&index=journals/flsulr>
3. Dan Schweitzer, “The Modern History of State Attorneys Aarguing as Amici Curiae in the U.S. Supreme Court,” 22 Green Bag 143 (2018)
http://www.greenbag.org/v22n2/v22n2_articles_schweitzer.pdf
3. Michelle Casady, “CFPB’s Structure Isn’t Constitutional, 11 States Tell High Court,” Law 360 (November 1, 2019) - Link:
<https://www.law360.com/articles/1216191/cfpb-s-structure-isn-t-constitutional-11-states-tell-high-court>

4. Dan Schweitzer, Who Argues for the States in the U.S. Supreme Court, (2017), NAGTRI Journal, (Nov., 2017) - Link: <https://www.naag.org/publications/nagtri-journal/volume-2-issue-4/who-argues-for-the-states-in-the-u.s.-supreme-court.php>
5. Emily Myers, State Attorneys General Powers and Responsibilities, Chapter 23, pp 476-484

Jan. 7 - Period 5

Relationship with Federal Government - The Affordable Care Act - Medicaid Fraud

State attorneys general have a complex relationship with the federal government, including the Department of Justice, local U.S. Attorneys, and other federal agencies. In most cases, attorneys general cooperate with federal agencies to carry out federal policy, but in some cases state attorneys general attempt to either challenge or prompt federal action. This class period and the next will explore and analyze this complex and changing relationship.

Cooperation is common with the investigation and prosecution of Medicaid fraud, human trafficking, internet child predators and all kinds of scams. But state AGs regardless of political party resist federal pre-emption of state laws and the AG enforcement powers in such areas as privacy and data breach. This class will examine NFIB v Sebellius and Texas v United States which both involve the Affordable Care Act. These cases illustrate the complexity of the issues involved, the limit of federal ability to require state action, division among attorneys general and the increasing involvement of state attorneys general in issues of great national concern.

1. NFIB v. Sebellius, 132 S. Ct. 2566 (2012)
2. State of Florida, et al. v. United States Department of Health and Human Services, et al., Order and Memorandum Opinion, Case No.:10 -cv-91-RV/EMT, U.S. Dist. Ct., N. Dist. Fla., October 14, 2010
3. State of Florida, et al. v. United States Department of Health and Human Services, et al., Order Granting Summary Judgment, Case No.: 3: 10-cv-91-RV/EMT, U.S. Dist. Ct., N. Dist. Of Fla., January 31,2011
4. Texas, et al. v. United States of America, et al., Memorandum Opinion and Order, Civil Action No. 4:18-cv-00167-O, U.S. Dist. Ct App., N. Dist. of Texas, December 14, 2018
5. Emma Platoff, “ Individual Mandate is Unconstitutional Federal Court Rules in Texas-led Affordable Care Act Lawsuit,” Texas Tribune (Dec. 18, 2019) <https://www.texastribune.org/2019/12/18/5th-circuit-strikes-down-individual-mandate-obamacare/>
6. Emily Myers, State Attorneys General Powers and Responsibilities, Chapter 18, pp 378 - 398

Jan. 7 - Period 6

Relationship with Federal Government - Climate Litigation

One of the most hotly contested areas of litigation today are the class action lawsuits by cities and counties against the large energy producing companies alleging harm from climate changed caused by carbon emissions when oil and gas they produce and sell is consumed as fuel or burned to produce electricity. This class will examine the decisions of several federal district courts now on appeal in five different federal circuit courts of appeal and briefs filed on both sides including amicus briefs of some state AGs. We will also examine the climate litigation filed by the Massachusetts Attorney General against Exxon Mobil and the separate climate litigation filed by the New York Attorney General against ExxonMobil on claims of misleading shareholders.

Note: All the cases below and many more climate cases, pleadings, orders, etc. may be found at climatecasechart.com which is the website of the Columbia Law School Sabin Center for Climate Change databases of all climate litigation. At the site click on “U.S. Climate Litigation” and then scroll to state litigation - enforcement cases to find the two attorney general cases and scroll further and click on “Common Law Cases” to find the city and county cases

1. City of New York v. BP P.L.C., et al., U.S. District Court, Southern District of New York No. 18, Civ. 182 (JFK), Opinion and Order Filed 7/19/2018
2. City of Oakland v. BP P.L.C, et al, U.S. District Court, Northern district of California, No. C 17-06011 WHA and No. C 17- 06012 WHA, Order Granting Motion to Dismiss Amended Complaints, June 25, 2018
3. County of San Mateo v. Chevron, et al., City of Imperial Beach v. Chevron, et al., County of Marin v. Chevron, et al., U.S. District Court , Northern District of California ,Cases No. 17-cv-04929 -VC, 17-cv-04934-VC, and 17-cv-04935-VC, Order Granting Motions to Remand dated March 16, 2018
4. Mayor and City Council of Baltimore v. BP P.L.C., et al., In the Circuit Court for the City of Baltimore, Complaint, (filed July 20, 2018) (review)
5. Commonwealth of Massachusetts v. Exxon Mobil, Suffolk County Superior Court Civil Action, Complaint (filed October 24, 2019) (review)
6. People of the State of New York v. Exxon Mobil, Supreme Court of New York, New York County, Decision, After Trial Dismissed with Prejudice (December 10, 2019) (review)
7. Keith Goldberg, “3 Takeaways from Mass. AG’s Exxon Climate Suit,” Law 360 (October 25, 2019) - Link: <https://www.law360.com/articles/1213553/3-takeaways-from-mass-ag-s-exxon-climate-suit>

Jan 8 - Period 7

Multistate Investigations and Litigation - Private Counsel - Antitrust

In the 1990s state attorneys general banded together to investigate and sue the tobacco industry which resulted in a 1998 Master Settlement Agreement with 46 states for payment of \$206 billion to the states over the first 25 years (Florida, Texas, Mississippi and Minnesota settled separately for a total of another \$35 billion). Over the years since, multistate AG investigations have become common and growing in number, size and importance. Most involve UDAP or antitrust matters. When multistate investigations involve complex matters, appear likely to go to trial and have the potential for very large recoveries, many, or all, the AGs engage private attorneys on contingency fee contracts to work with them. This class period and the next will examine and discuss the growth of the multistate investigation and several recent examples including the enormously complex opioid multistate.

1. “The Tobacco Settlement,” State AG.org -(review - please click on the links on the tobacco settlement which will appear once you open the link that follows, then listen to a portion of the press conference and interviews to get an understanding; I do not expect you to watch or listen to all the lengthy interviews or watch the whole press conference - Link: <https://www.stateag.org/initiatives/the-tobacco-settlement>
2. Eric Lipton, “Lawyers Create Big Paydays by Coaxing Attorneys General to Sue,” New York Times, Dec. 18, 2014 - Link:
<https://www.nytimes.com/2014/12/19/us/politics/lawyers-create-big-paydays-by-coaxing-attorneys-general-to-sue.html?hpw&rref=us&action=click&pgtype=Homepage&module=well-region®ion=bottom-well&WT.nav=bottom-well&r=0>
3. Transparency in Private Attorney Contracting Act, Florida Statutes, Title IV, Ch. 16, Section 16.0155
4. State of Florida v Purdue Pharma, et al., Amended Complaint, Circuit Court of Sixth Jud. Cir., West Pasco Co. Div., Case NO. 2018 - CA - 001438, filed Nov. 16, 2018 (review)
5. Mike Spector, “Hyundai, Kia Settle State Probes over Misstated Fuel Economy,” The Wall Street Journal (October 27, 2016) - Link: https://www.wsj.com/articles/hyundai-kia-settle-state-probes-over-misstated-fuel-economy-1477594103 --- alternatively <https://advance.lexis.com/api/permalink/fac2895b-8555-49f4-be3d-75e499e8c8bc/?context=1000516>
6. Mark Huffman, Hyundai and Kia Settle Inflated Fuel Economy Complaint, consumeraffairs.com, October 28, 2016
- 7.....State of Iowa ex re. Thomas J. Miller, Attorney General of Iowa v. Hyundai Motor Company, et al, Consent Judgment, Iowa District Court for Polk County, Equity No. EQCE080756, filed Oct. 31, 2016
8. Andrew Kragie, “AGs Fire Back After Pharma Bid to End Price-Fixing Claims,” Law 36 (July 26, 2019) - Link: https://www.law360.com/articles/1182268/ags-fire-back-after-pharma-bid-to-end-price-fixing-claims

- 9.....Catherine Thorbecke, “Trial begins for state attorneys general’s lawsuit over T-Mobile and Sprint ‘megamerger’,”ABCNews.go.com (Dec. 9, 2019)
<https://abcnews.go.com/Business/trial-begins-state-ags-lawsuit-mobile-sprint-megamerger/story?id=67598013>
10. Steve Lohr, “Google Antitrust Investigation Outlined by State Attorneys General,” The New York Times, (Sept. 9, 2019)
<https://www.nytimes.com/2019/09/09/technology/google-antitrust-investigation.html>
11. Emily Birnbaum, “Nearly every state attorney general joins Facebook antitrust investigation,” The Hill (Oct. 22, 2019)
<https://thehill.com/policy/technology/466890-nearly-every-state-attorney-general-joins-facebook-antitrust-investigation>
12. Emily Myers, State Attorneys General Powers and Responsibilities, Chapter 15, pp 312 - 332

Jan. 8 - Period 8

Multistate Investigations and Litigation - Municipality Litigation Issues

Cities and counties across the country have filed hundreds of lawsuits against the same manufacturers and distributors of opioids as have the state attorneys general. Although fewer in number cities and counties have filed climate litigation lawsuits against large energy producing companies. In all these lawsuits the principal claim is under the common law doctrine of public nuisance. While every state has home rule laws that give local governments wide ranging decision making authority, these lawsuits engaging outside counsel on a contingency fee basis and often claiming damages for injuries to a wider community than their city or county have given rise to a growing debate over restricting their authority to bring such suits or enacting legislation narrowing the definition and scope of public nuisance. State attorneys general are increasingly outspoken on this issue. This class will explore this debate and discuss the legal issues involved.

1. Rob McKenna, Elbert Lin and Drew Ketterer, Mitigating Municipality Litigation: Scope and Solution, U.S. Chamber of Commerce Institute for Legal Reform (March 6, 2019) - Link: [Mitigating Municipality Litigation](#)
2. Joshua K. Payne and Jess R. Nix., Waking the Litigation Monster: The Misuse of Public Nuisance, U.S. Chamber of Commerce Institute for Legal Reform (March, 2019) - Link: [Waking the Litigation Monster](#)
3. George Jepson and Perry Zinn Rowthorn, “Leave Opioid Lawsuits to State Attorneys General,” Wall Street Journal, March 3, 2019
<https://advance.lexis.com/api/permalink/24df7725-b401-4f7b-819e-13ac43dcd5aa/?context=1000516>

4. Sara Randazza, “In the Opioid Litigation Its Now Cities vs. States,” Wall Street Journal, August 6, 2019 - Link: <https://www.wsj.com/articles/in-the-opioid-litigation-its-now-states-v-cities-11565123075> -- alternatively <https://advance.lexis.com/api/permalink/05856e86-f730-47b6-aa90-34ef0abad193/?context=1000516>
5. Petition for Writ of Mandamus of State of Ohio, U.S. 6th Cir, Ct. App No. 19-3827 (2019)
6. Brief of Amici Curiae States of Michigan, et al in Support of the State of Ohio’s Petition for Writ of Mandamus, U.S. 6th Cir. Ct. App No. 19-3827 (2019)

Jan. 8 - Period 9

The Florida Cabinet

Special Guest: Deputy Executive Director of the Florida State Board of Administration and former Florida Deputy Attorney General and General Counsel Kent Perez. This class period will focus on the Florida Cabinet where the Florida Attorney General shares power with the Governor, the Chief Financial Officer and the Commissioner of Agriculture and Consumer Affairs on a dozen boards and commissions. The history of the Cabinet will be covered as will the voting powers of members and the nature of the business conducted at Cabinet meetings with respect to these boards and commissions. Florida’s attorney general is the only AG in the country who shares such powers with the governor and other state-wide elected officers of the state. Among the boards are the Board of Trustees of the Internal Improvement Fund, the Florida Department of Law Enforcement, the Board of Executive Clemency, the Department of Highway Safety and Motor Vehicles , the Financial Services Commission and the Florida Land and water Adjudicatory Commission. Only the Governor, Attorney general and Chief Financial Officer oversee the State Board of Administration.

1. Kent J. Perez, “The Florida Cabinet System,” Presentation to the Constitution Revision Commission (Oct. 4, 2017)
2. Edwin A. Bayo & Kent J. Perez, Florida’s Cabinet System YK and Beyond, 74 FLA. Bar Journal 68 (November 2000) - Link: <http://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=aph&AN=3797042&site=ehost-live>
3. Kent Perez, The New Constitutional Cabinet - “Florida’s Four”, 82 Fla. Bar Journal 62 (April 2008) - Link: <http://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=aph&AN=31708192&site=ehost-live>
4. Ira William McCollum, Jr, The Florida Cabinet System - A Critical Analysis, 43 Fla Bar Journal 156 (March 1969) - Link: https://heinonline.org/HOL/Page?public=true&handle=hein.barjournals/florbarj0043&div=19&start_page=156&collection=barjournals&set as cursor=0&men tab=srchresults

Jan. 9 - Period 10

Open Government and Sunshine Laws - Attorney General Opinions

Special Guest: Florida Lottery Deputy General Counsel and former Deputy General Counsel for the Florida Attorney General Alexis Lambert. Florida enacted the Government in the Sunshine law in 1967, and reinforced it with a constitutional amendment in 1992. To this day Florida has one of the strongest open government laws in the country. The Florida Attorney General advises state agencies and local governmental bodies on these laws. Separately the Attorney General in his/her discretion when requested by state agencies and local governments issues opinions interpreting state laws. This is one of the earliest functions of state attorneys general. These opinions are published and today may be found online. While these opinions are non-binding on courts they have long been relied upon by local governments and state agencies in their deliberations and determinations. This class period will examine the Florida Sunshine Law with special attention to the concerns attorneys should have with regard to these laws when representing both governmental and private clients. And the role of AG opinions will be discussed including who may request an opinion, how it is prepared, reviewed and issued and how opinions impact the deliberations and decisions of local and state governmental bodies and agencies.

Note: Attorney General Opinions may be found chronologically by date or by opinion number and year at myfloridalegal.com, the Florida Attorney General website.

1. [Florida Government in the Sunshine Manual \(copy may be found at myfloridalegal.com, the Florida AG website\)](#)
2. Art Levy, “Attorney: Open Government Laws Go Beyond the Computer,” Florida Trend, Nov. 1, 2008 - Link: <https://www.floridatrend.com/article/6646/attorney-open-government-laws-go-beyond-the-computer>
3. [NCAA v. Associated Press, 18 So. 3d 1201](#)
4. AGO 09-19, April 23, 2009, “[Municipalities - Records - Government in the Sunshine Law - Internet](#)”
5. AGO - 09 -51, Nov. 24, 2009, “[School Districts - Insurance - Workers Compensation](#)”
6. Emily Myers, [State Attorneys General Powers and Responsibilities](#), Chapter 5, pp80 -90, Chapter 26, pp 502 - 511

Jan. 9 - Period 11

The Florida Office of Statewide Prosecutor, Criminal Jurisdiction, Criminal Appeals, Justice Reform and Corruption

Special Guest: Holland & Knight Partner and former Florida Statewide Prosecutor (2007-2011) Bill Shepherd. In some states such as Ohio state attorneys general have concurrent prosecutorial authority with state and local prosecutors on every criminal matter. Other attorneys general have

some, more limited prosecutorial powers. Florida's attorney general has none save a constitutionally defined role in selecting, hiring and firing the Statewide Prosecutor. Conversely Florida's attorney general is unique among the country's AGs in handling all criminal appeals from felony convictions in state courts and a special role in death penalty cases. The Office of Statewide Prosecutor was created when Florida voters adopted a constitutional amendment recommended by the legislature in 1987. Every four years the Attorney General appoints the Statewide Prosecutor from a list of at least three nominees submitted by the State Supreme Court Nominating Commission. The Prosecutor's office is housed in the Department of Legal Affairs headed by the AG, but the budget is separate. The jurisdiction is limited to criminal matters that involve two or more judicial circuits, organized criminal enterprises and public corruption. He/she also runs all statewide grand juries. This class period will examine the history and relationship of the Statewide Prosecutor with the AG and State Attorneys who have primary criminal jurisdiction in each judicial circuit. Statewide Grand Juries will be discussed as will corruption investigations and prosecutions. In addition, there will be a discussion of criminal justice reform and the role of the attorneys general with specific attention to Florida

1. The Florida Constitution, Article IV, Section 4(c)
2. Florida Statutes Title IV, Chapter 16, Section 16.56
3. R. Scott Palmer and Barbara M. Linthicum, The Statewide Prosecutor: A New Weapon Against Organized Crime, Florida State University Law Review, Vol. 13:653 - Link: https://heinonline.org/HOL/Page?handle=hein.journals/flsulr13&div=34&g_sent=1&casa_token=&collection=journals
4. The Office of Statewide Prosecution Is Effective and Economically Viable, Office of Program Policy Analysis and Government Accountability (OPPAGA), an office of the Florida Legislature, Information Brief, Report No. 02-03 (Jan. 2002) - Link: <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0203rpt.pdf>

Jan. 9 - Period 12

The Role of State Attorneys General in Non-profit Governance

Special Guest: Holland & Knight partner and former Florida Statewide Prosecutor Bill Shepherd. State Attorneys General have always had some responsibility to review the operations of nonprofit charities and foundations. Particularly as non-profit organizations such as hospitals play a larger and larger role in the economy, the attorney general's increased use of that authority has taken on national significance. There is now greater scrutiny in many AG offices of the non-profit governance of hospitals, health insurers and universities. This class analyzes the parameters of that authority.

1. Emily Myers, State Attorneys General Powers and Responsibilities, Chapter 12, pp 215 - 246
2. Florida Trust Code, Florida Statutes Sec. 736.0110 (3)
3. Florida Statutes Sec. 617.0304 (2)

4. Blaine Winship, Special Counsel, Office the Attorney General, State of Florida, “The Florida Attorney General and Charitable Trusts” (2019)

5 Office of the Attorney General, State of Florida Department of Legal Affairs v. The Ritz Theatre 100, Inc., a Florida Not-For-Profit Corporation, and Stella C. Heath, Circuit Ct., Tenth Judicial Cir., Case No.: 2018-CA-000797, Complaint (review)

6. Attorney General v. Hahnemann Hospital, 397 Mass. 820 (1986) (review)

Jan. 10 - Period 13

Civil Rights

Special Guest: Gilbert King, author of The Devil in the Grove and Beneath the Ruthless Sun.. The Florida Attorney General has an Office of Civil Rights and is authorized to investigate and initiate actions for damages, injunctive relief, and civil penalties where he/she has reason to believe a person or group is engaged in a pattern or practice of discrimination on the basis of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status and the discrimination raises an issue of great public interest. As Gilbert King described in his two books, Florida in the 1940s, ‘50s, 60s and 70s did not have an attorney general who took on the rampant civil rights abuses of that era and the state civil rights laws on the books today did not exist. Along with a general conversation with Mr. King about his two books and the state of civil rights in Florida in the era about which he wrote, we will examine the role of the state attorney general in civil rights enforcement today, the relationship with federal civil rights enforcement and the specific powers of the Florida AG.

1. Gilbert King, Devil in the Grove (2012), Harper Collins
2. Gilbert King, Beneath the Ruthless Sun (2018), Riverhead Books (optional - not required reading, but the complete picture of the 36 years of civil rights abuses when Willis McCall served as Lake County Sheriff cannot be gained without reading this book) (recommended)
3. Ch. 16, Section 16.57, Florida Statutes
4. Ch. 760, Florida Statutes
5. Emily Myers, State Attorneys General Powers and Responsibilities, Chapter 19, pp 399 - 414

Jan. 10 - Period 14

Course Conclusion -Civil Rights Continued Hypothetical Exercise

Discussion will continue with special guest Gilbert King. Students will engage in an exercise using a hypothetical that assumes you are the Florida Attorney general in 1960, and you learn of certain facts involving very disturbing and probably illegal actions by Lake County Sheriff Willis McCall and want to take action. Understanding this is before enactment of either the

federal or Florida civil rights laws and with no statutory authority to prosecute crimes, what would you do?