

STATE ATTORNEYS GENERAL 101

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Attorneys General Background

- Attorneys General NOT Attorney Generals
- Elected vs. Appointed
- Types of Consumer Protection Authority:
 - State and Federal law
 - Common law
- AGs and their staff

Tip #1: Attorneys General are NOT the FTC

- Broader legal authority, including recoveries.
- Varied legal deference to FTC interpretations.
- Resource constraints, and what it means to a target.

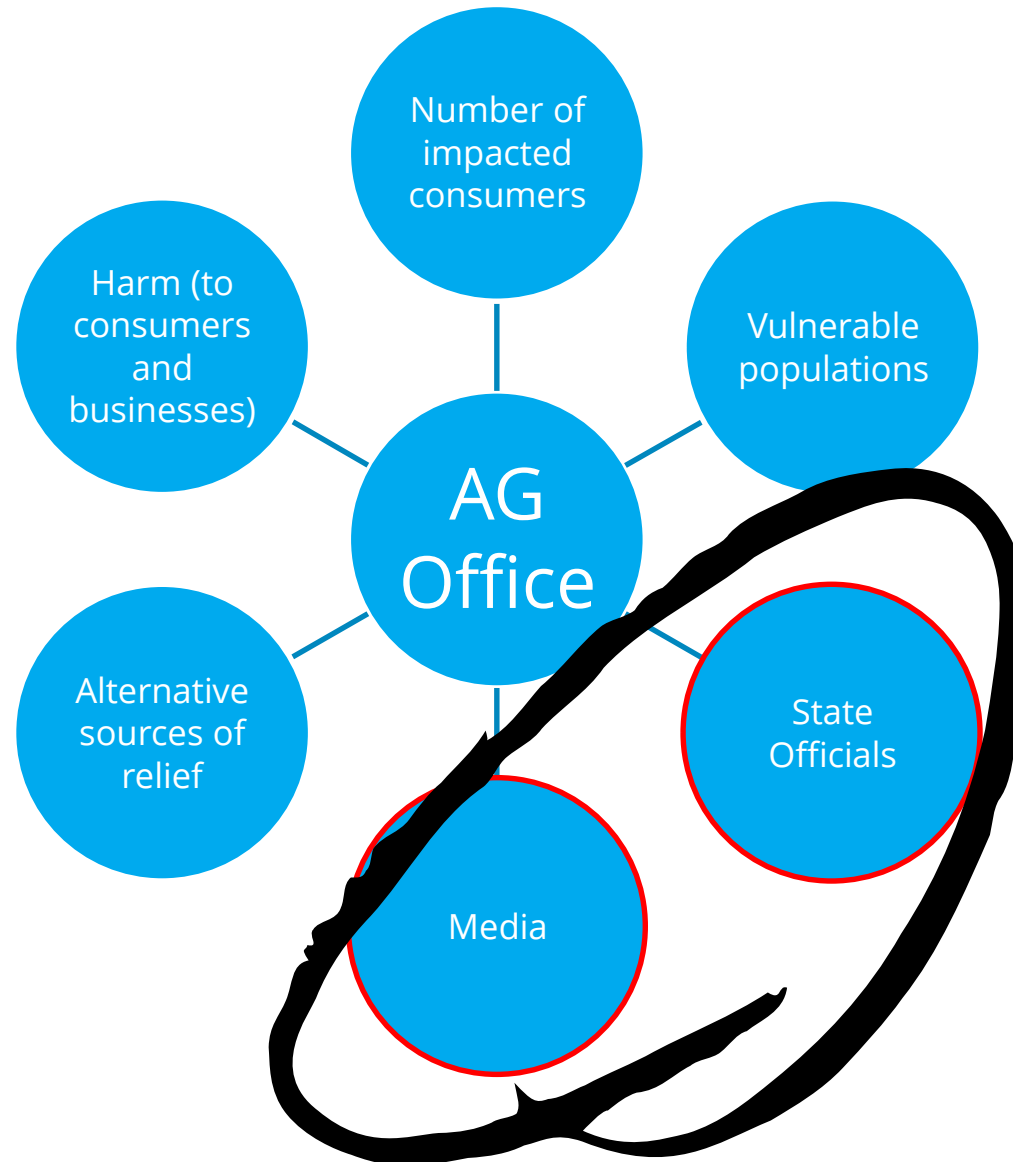
Case Selection: Sources



Case Selection: Prioritization



Case Selection: Prioritization



Tip #2: Stay off the radar!

- Monitor consumer complaints
- Monitor media
- Follow the AG meetings and trends
- Seek input and advice early

I'm on the radar: Now what?

- **Civil Investigative Demands**
 - **Confidentiality:** For example, Mass. Gen. Laws Ch. 93 § 8 ; Tex. Bus. & Comm. Code §17.61(f)
 - **Scope:** *Steele v. State ex rel. Gorton*, 85 Wash.2d 585 (1975) and *Oklahoma Press Publishing v. Walling*, 327 U.S. 186 (1946); *Congregation B'Nai Jonah v. Kuriansky*, 172 A.D.2d 35 (New York S Ct 1991)
 - **Objections:** *Twitter Inc. v. Paxton*, 26F.4th 1119 (9th Cir. 2022)
- **Sworn Statements**
- **Interrogatories**
- **Single state or multistate**

Tip #3: First impressions matter

- AG authority is expansive and challenges to that authority may be difficult
- An early response is an opportunity to tell your story
- AG offices generally have an open door
- Be thoughtful in your response

What are these multistates I hear about?

- **Formation:**
 - NAAG Working groups
 - Meetings/Conferences
 - Staff relationships

- **Why States do it:**
 - Resources
 - Legal limitations
 - Benefits to the business community?

Tip #4: Know what to expect if there are multiple states

- Structure of a multistate – who to talk to and when
- Legal obligations/authority of each state
- The art of collective vs. individual conversations
- Respondent-driven multistates

Competitor Complaints

- Ways to Engage:
 - Working groups
 - Key states for you or your industry
- But consider the consequences:



Tip #5: Do your homework before pointing the finger

- Know the right states to approach and the appropriate messaging
- Make sure your own conduct is completely above board
- Know FOIA laws in the States and the implications:
 - California
 - Texas
 - Utah
 - Florida

When to conduct a legal review

- **Preventative:** Legal review of new campaigns or offerings
- **Proactive:** Ongoing review of conduct in light of AG priorities
- **Reactive:** Responding to complaints and other AG inquiries

Counsel helps define realistic goals, who the right people are to talk to, and what you should be prepared to do yourself.

THANK YOU



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JOIN US

State Attorneys General 102 **Thursday, June 30th**

As discussed in State Attorneys General 101, State Attorneys General are the primary enforcers of consumer protection laws within their state and hold sweeping powers to protect the public they serve by launching investigations and litigation alone or in multi-state actions involving numerous states and territories across the country.

As requested by many, please join Kelley Drye State Attorneys General practice Co-Chair Paul Singer and Senior Associate Beth Chun for State Attorneys General 102. This webinar picks up where we left off and answers a number of questions regarding:

- Pre-suit/investigation notice requirements for Attorneys General
- Additional information on the scope of Attorneys General investigative authority and how to challenge an investigation
- Consumer Complaints: differences among the AGs on handling and use

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QUESTIONS NOT COVERED TODAY**

