

## Why WilmerHale State AG Practice Emphasizes Bipartisanship

By Alison Knezevich

*Law360 (April 14, 2023, 1:29 PM EDT)* -- With Democratic and Republican state attorneys general lining up on the opposite sides of hot-button issues such as ESG or environmental, social and governance investing, the leaders of WilmerHale's state AG practice say a bipartisan perspective from lawyers is key for clients who may come under scrutiny.

State attorneys general across the country have turned up the heat in recent years, and BigLaw firms like WilmerHale are bolstering practices that represent companies facing investigations, litigation and enforcement actions. Last month, the firm brought on Paul Connell, a former chief deputy attorney general in the Wisconsin Department of Justice under Republican Brad Schimel.

Connell, previously with Cozen O'Connor, now co-chairs WilmerHale's practice with Brian Mahanna, a Democrat who worked as chief of staff and deputy attorney general in the New York state attorney general's office.

Connell and Mahanna told Law360 Pulse in a recent interview that their government experience helps them understand how state attorneys general approach their work as a broad array of topics draw interest.

These days, Mahanna said, "if an AG wants a way into an issue, there is nearly always a way to do so."

The career path of state attorneys general also has shifted, with officials coming to the job from varied backgrounds, Connell said.

"There was a time when it was pretty routine, [such as] a prosecutor who rose up through the ranks and became the attorney general," he said.

Here, Connell and Mahanna discuss why state attorneys general have become more active, which issues are attracting the most attention, and more. This interview has been edited for length and clarity.

### Why do you think it's important to have a bipartisan state AG practice?

**Mahanna:** Attorneys general are a combination of law enforcement officers, prosecutors and elected



Brian Mahanna



Paul Connell

officials. As elected officials, they have campaigned on both partisan and nonpartisan issues. When you're interacting with them, you need to understand their motivations and how they think about the world and the problems that they seek to solve. Republicans and Democrats in this country think about certain issues somewhat differently. So clients need people who understand those perspectives, who have come from those offices, and can be good lawyers and good advocates.

**Connell:** Today, it's pretty rare that significant client issues are confined to one state. The kinds of issues that we address at WilmerHale cross state lines, and as a result, you're almost certainly going to encounter Republicans and Democrats working together. A company needs a fulsome defense that crosses party lines, understands what will motivate different AGs to settle and how to litigate against those offices throughout a case.

### **What topics do you expect to draw the most interest from state AGs over the next few years?**

**Connell:** The biggest issue right now is everything around ESG and investing. Artificial intelligence also has become very prominent, including how AI is being used in health care and finance. Another topic is health care generally. Health care eats up more and more of what states and the federal government spend every year. With that comes waste, fraud and abuse enforcement. AGs have huge influence over that because of their state Medicaid fraud enforcement authority.

**Mahanna:** You could not come up with an issue in which the two parties have more diametrically opposed views of an issue than ESG. Going back to your first question, part of the reason why you would want a bipartisan state attorney general practice is because a lot of companies are caught between a rock and a hard place in terms of how to approach these important issues.

### **What political and legal factors are causing state AGs across the country to become more active?**

**Mahanna:** One of them is certainly the view — I think it's a pretty widely held bipartisan view — that the federal government is not responding particularly well to the challenges of the day. In particular, that Congress is often not legislating and not creating national standards and roles for emerging technologies or, frankly, technologies that have emerged quite some time ago but still have not been properly thought through.

AGs benefit from having their sort of foundational legal authority being broad consumer protection statutes that can essentially serve as a Swiss army knife and be utilized in a variety of contexts.

Also — and this is primarily, though not exclusively, in the context of litigation against the federal government — the ability for AGs to bring cases on behalf of their constituents has really been expanded. The Supreme Court is thinking about some of those issues in the context of the challenge to the Biden administration's student loan forgiveness.

We started by talking about how they are elected prosecutors, and there's a lot of credit to be gained from advocating forcefully on behalf of your constituents.

### **How does your experience in government inform your perspective now working in private practice?**

**Mahanna:** It informs your understanding of how these offices work, the tools they use, and how they conduct investigations and make decisions.

There are attorneys who handle government investigations as a general matter, usually by federal authorities or U.S. attorneys. Some of those principles and skills are totally transferable. But having been in the leadership of a state AG office, you get a different perspective of how elected prosecutors operate and the specific tools that these offices have.

You also get a sense of how AGs interact with one another. A lot of companies are facing multistate investigations, where there sometimes are a very large number of AGs investigating issues simultaneously, but who still have their own perspectives. Having interacted with those people while in government and having a sense of how they might operate is quite useful to clients.

**Connell:** For myself, understanding how multistate investigations form — you walk away with a real perspective on that. Along with that is the ability to predict generally where agencies are headed and what issues matter to them. You can help your clients to understand where they may have exposure or make changes in their compliance policies.

Being a former federal prosecutor helps form a complete defense around a case. More and more, AGs are working in packs in conjunction with a federal agency — it could be the [Department of Justice] or the Federal Trade Commission or another agency. Understanding how to help clients navigate that overwhelming amount of government scrutiny at once is something that I think Brian and I bring to the table.

--Editing by Alyssa Miller.