

Professor(s): Lynne Ross & Divonne Smoyer

Tues. 4:00 – 6:00 pm EST | Final Exam: N/A

Reading(s): [REQUIRED]

State Attorneys General Powers and Responsibilities, Emily Myers, editor, 4th edition, (2018). National Association of Attorneys General. Note this book has useful state-by-state information at the end of the book, including authority for the AGO, key cases, and states and other jurisdictions. Chapters will be assigned weekly.

Please use the fourth edition of the *Powers and Responsibilities* book, which will be available in the Scalia Law School Bookstore. For the two papers and final memorandum, your research should include developments from 2019 to 2025 as well.

Supplemental Materials

The instructors will regularly supplement textbook readings with journal articles, case law, and other materials. In addition, students are encouraged to visit the website of the AG they are following, as well as to visit, review, and utilize the following web resources throughout the semester:

- AG Alliance Partnership <https://www.agalliance.org/ap/>
- National Association of Attorneys General: www.naag.org
- NAAG Multistate Litigation and Database <https://www.naag.org/news-resources/research-data/multistate-settlements-database/>
- District of Columbia AG: <http://oag.dc.gov>
- Virginia Attorney General Office: www.oag.state.va.us
- Maryland Attorney General Office: www.oag.state.md.us
- GMU Law and Economics Center's AG Program: <https://masonlec.org/divisions/mason-attorneys-general-education-program/>
- The Federalist Society: <https://fedsoc.org/>
- Institute for Legal Reform - State AGs: <http://www.instituteforlegalreform.org>
- U.S. Department of Justice (DOJ): <https://www.justice.gov/>
- Federal Trade Commission (FTC): <https://www.ftc.gov/>
- Consumer Financial Protection Bureau (CFPB): <https://www.consumerfinance.gov>

Communication(s):

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Office Hours: By appointment.

INSTRUCTOR BACKGROUND

Prof. Ross, former Executive Director of the National Association of Attorneys General (NAAG), is a consultant to a Richmond law firm and has her own consulting practice specializing in state/intergovernmental matters with a focus on state Attorneys General. Her prior NAAG experience of 27 years includes her role as deputy/legislative director. She also served for four years as head of Congressional relations/legislative director at U.S. EPA. As NAAG Executive Director, she managed a 50- person staff working to assist AGs in their substantive work ranging from tobacco, consumer protection, antitrust, criminal law, environment, and federal legislation, among other areas, and was the eyes and ears for AGs regarding federal agency activities and outreach with state and other associations.

Prof. Smoyer, an experienced legal advocate, is principal at Albermarle Law & Policy, PLLC, where she advises clients on a wide range of matters, with a focus on legal/policy

matters involving state Attorneys General. For over two decades she has worked with clients on AG investigations as well as to avoid becoming the target of state investigations and to resolve issues before they become litigation. She is a graduate of Harvard Law School and Smith College

COURSE DESCRIPTION

The Office of State Attorney General (AGO) has evolved greatly over time and has gained importance and visibility in recent decades. This is true within the states/territories in which they function, but more so in relation to other legal and policy actors nationally and even internationally. Virtually every public policy issue today has a legal component that falls within the purview of the state Attorneys General (AGs). This seminar addresses the unique role of the Attorney General (AG) in our legal system; AG powers and duties; the complexities of the role as the state's chief legal officer, including the political dynamics that have made AGs into the political force they are today; the oft-competing perspectives of AG work within the broader context of law and policy; and the role of AGs in shaping national issues, and interaction with local officials.

Law 624 will focus on core areas of the AGO, including the function of defending the states as well as the affirmative litigation relating to antitrust, consumer protection, and civil rights, among other areas. Students will also study AG office organization, roles of key staff positions, office culture, and conflicts in representation (who is the client?) and emerging legal trends. Students will be assigned an AG to follow throughout the semester, and students are expected to review weekly and stay up to date on state developments that reflect the work of their AG.

Throughout the semester, lectures, reading assignments (to be assigned by weekly email-not all listed in syllabus), and class discussions will focus on many current state AG issues, highlighting AG legal authority, powers and duties, and emerging legal issues. The course begins with an overview of the culture, legal authority, and optics surrounding the AGO, followed by the fundamentals of state AG work, including a survey of the law and related issues pertaining to jurisdiction, powers, duties, staff responsibilities, as well as the AG role in state government and on the national stage.

Current and former AGs, key AGO staff, and other experts in substantive AG matters are invited as guest lecturers, offering their insights on the role and work of AGs. These speakers will engage directly with students, affording an opportunity to become acquainted, to dialogue about legal issues of concern, and often, to provide advice about public service careers. Students are expected to be prepared to engage with the speakers on a meaningful basis.

COURSE OBJECTIVES

Students will be able to apply information learned in this course and skills to real-world situations in public or private practice connected to the roles of state Attorneys General.

Students will develop an understanding of the status of the AGs in state government, including relationships with their Governors, the legislature, and the state and federal judicial system; and perspectives on the inevitable conflicts that arise regarding agency representation.

Students will gain an understanding of the AG state-federal relationship and how federalism issues emerge and get resolved in an ever-changing environment.

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Students will learn about the role of the prosecutor in the justice system (state and local) and the pros and cons of decisions based on prosecutorial discretion.

Students will meet and interact with AGs and other guest speakers, adding to student understanding of the power of Attorneys General, both individually and collectively, and enhancing student ability to communicate about these roles/responsibilities orally and in writing to a variety of audiences.

Student Information (to be provided in advance of first class)

Prof. Ross will send students an email requesting information about individual interests before the semester begins, with a response due back to both professors by Jan. 15, 2025. We want to get to know our students in advance, so if you have any specific interests/goals, we can address in class and plan accordingly.

Following an Attorney General

Students will be assigned an AG to follow prior to the first class. To prepare, students should research their AG, including term in office, political affiliation, scope of office responsibilities, their authority if designated in their State Constitution, and oath of office. Please review their AG website. You may be called upon in the first class.

Throughout the semester, it is expected that students will research and learn about the powers and duties of their AG; and monitor significant initiatives and developments, focused on the weekly class assignment and theme for the class that week. Please be prepared weekly to keep track of what your AG is doing and why, noting brewing conflicts, especially with other state or federal officials. The goal is to step into the AG's shoes and understand and be able to explain why significant actions are taken and on what legal basis. Watch for cases filed and understand the underlying legal authority.

GRADING & PARTICIPATION

Communication with Students

Prof. Ross will send weekly emails with information about the upcoming class, including topic and assignments. The weekly topics noted in the syllabus may need to change to accommodate outside speakers or current events. So please be sure to rely upon the weekly class emails Prof. Ross will send, especially for reading assignments. If you do not receive the email by c.o.b. Friday noon before the next class, please email Prof. Ross.

Virginia law requires that we assure confidentiality of all student address information, so unless you approve a sign-on waiver (to be sent), messages will be sent as "bcc" to all recipients. Individual emails will be addressed to a student's GMU email. Instructors will respond to emails in a reasonable amount of time. If you need to meet, either in person with Prof. Ross or Prof. Smoyer (or both), office hours can be scheduled upon request, in person or on-line conference.

Instructor Evaluations

Towards the end of the semester, course evaluations will be conducted online. Notices of the 10-day period in which online student evaluations can be completed will be sent to your Mason email accounts. Both professors should be evaluated. We want your feedback, as it helps us make changes/improvements.

Expectations

The instructors and students will engage with the highest level of professional ethics, demonstrate a genuine interest in the subject matter at hand and come to every class fully prepared to participate in the learning process. This means reading as assigned, participating in the class discussions, engaging with outside speakers, and asking questions.

Students will complete all the readings in advance of each class and come to class ready to discuss their own experiences and insights regarding the lessons at hand.

Students will adhere to the George Mason University Honor Code. Copying, cheating, or plagiarism will not be tolerated.

Students will follow school attendance policies, attend class sessions, and participate in class discussions. Students who are unable to attend any class must inform the instructors of their pending absence in advance. The instructors will work to accommodate every student's situation, where appropriate, including unexpected family or personal challenges and unanticipated events.

Unless otherwise agreed upon by the instructors in advance, students will submit all their assignments on time. With rare exception, any late assignments will be marked down a minimum of one full letter grade. This means A to B, B to C, etc. Students are expected to proofread their written products for typos and grammatical errors, which if left unchecked, will result in a lower grade. Failure to fully follow the directions for any assignment will result in a lower grade. Grading is based on a curve in accordance with school policy.

The instructors will maintain an open-door policy and be available to field any questions, concerns, comments, etc. within a reasonable timeframe.

Artificial Intelligence

Use of Generative Artificial Intelligence to draft your papers is prohibited. However, if you use AI in your legal research, please (on a separate piece of paper) write down the questions you asked AI to identify for the Memoranda assignments. Remember you are responsible for the accuracy of the research and information.

Attendance

Attendance will be taken at the beginning of every class and tracked throughout the semester. Reminder: a student who is not present for at least 75 percent of any class session is considered absent for that session. Your instructors would appreciate a heads- up via email if you are going to be absent for a class. Please email both professors.

Grades

Grades in the course will be completed reflecting GMUSL academic policy based on the following elements, as explained in more detail below. All grades will be based on timely submission of each assignment—failure to submit each assignment in a timely manner will result in a reduction in grade, as will papers with typos and grammatical issues.

Grading will be based on a curve in accordance with school policy. An A paper will be well-written and researched; respond to all questions presented in the assignment; have no typos or grammatical errors; and have excellent rationales and analysis well-documented by primarily legal sources. Grades will be lowered for reasons including but not limited to typos, run-on sentences, no punctuation, grammatical errors, no legal analysis, or no

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effective research to support your positions, and missing key legal citations discussed by speakers or professors to support your perspective. The law school's academic regulation allows using class participation to increase or reduce a final course grade to the next higher or lower half grade. It is very important to attend class and to participate in the discussions. Attendance will be kept, in accordance with law school regulations. Class participation will be taken into consideration in determining final grades, especially where it is a close call between A or A-, B, B+, or B-, etc.

Grades will be based on the following:

- 2 short papers (Memorandum 1 & 2) 50%. (25% each)
- Final paper 50%

Memorandum – Writing Assignment 1

Due February 4 at 4 pm. Please bring two one-sided copies to class and email a copy to both professors.

The topic will be presented and discussed during the 2nd class. It will be a memorandum not to exceed 4 pages (please number pages) from you to the AG you are following.

Details: Please put your name on the front of the paper. Assignments must be in Times New Roman, 12 pt. font, double-spaced, and one-sided. Page limits are inclusive of all citations, which should be footnotes (10- point type please) in accordance with Blue Book format. Failure to follow instructions as to format; or to respond to issues presented; or a lack of legal citations to substantive legal authorities (writing assignments CANNOT be based solely on newspaper or other articles or opinions) will result in a lowered grade by at least one level or more (A to B). More details to be explained in class.

Memorandum – Writing Assignment 2

Due March 4 at 4 pm. Please bring two one-sided copies to class and email a copy to both professors.

The topic will be presented and discussed during the 3rd class. It will be a memorandum not to exceed 4 pages (please number pages) from you to the AG you are following.

Details: Please put your name on the front of the paper. Assignments must be in Times New Roman, 12 pt. font, double-spaced, and one-sided. Page limits are inclusive of all citations, which should be footnotes (10- point type please) in accordance with Blue Book format. Failure to follow instructions as to format; or to respond to issues presented; or a lack of legal citations to substantive legal authorities (writing assignments CANNOT be based solely on newspaper or other articles or opinions) will result in a lowered grade by at least one level or more (A to B). More details to be explained in class.

Final Term Paper - Writing Assignment 3

Due April 22 at 4 pm. Please bring two one-sided copies to class and email a copy to both professors.

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The primary assignment for this class will be a paper not to exceed 15 pages. Topic to be presented in class. When you write, please draw upon the rich diversity of legal resources as well as speakers. While an outline submitted in advance is not required, your professors will review and provide feedback if you elect to draft one. Please give us at least one week to review and comment.

Details: Please put your name on page 1 of the paper. Assignments must be in Times New Roman, 12 pt. font, double-spaced, one-sided, with page numbers. Page limits are inclusive of all citations, which should be footnotes in accordance with Blue Book format (10-point type please). Failure to follow instructions as to format or to respond to issues presented or a lack of legal citations to substantive legal authorities (writing assignments CANNOT be based solely on newspaper articles or opinions), will result in a lowered grade by at least one level or more. Please put your name at the right-hand corner of first page and indicate if you are a graduating 3L. Reminder: Papers will be graded on a curve, so everyone cannot receive an A. We expect your research to go beyond just what is in the Powers & Responsibilities book and include some current/recent cases in the time frame of 2019-2025. Also, please take notes from speakers as these will be useful. It is expected that you will refer to these speakers as well as the AG you follow in your final paper.

COURSE SCHEDULE & ASSIGNMENTS

Session #1: January 21

Overview of the Course / Powers and Duties (Part I) and Rules of the Road – AG 101

Professors will review the syllabus, and discuss administrative aspects of attendance, class participation, grading, writing assignments and course materials and our expectations of students and learning outcomes. In this first class, Professors will introduce you to the AGO and AGs and their staff, the culture, the relevant acronyms, legal framework, and individual and collective actions of AGs in their states and beyond. An overview of the role of AGs will be provided, citing their powers and duties broadly. Topics will include a brief historical background, methods of selection, qualifications to run for office, and the varied backgrounds of AGs in office today. During the semester, there will be discussion of the common law authority of AGs, the complexities involved in potential conflicts in representation defining who is the client, the role of the AG in defending the states, the tools that AGs use to express their views, and the “people’s lawyer” role that many AGs reference in their advocacy, legislative, and public policy initiatives.

Assignment

Read Chapter 1, Origin and Development of the Office; and Chapter 2, Qualifications, Selection and Term,

State Attorneys General Powers & Responsibilities edited by Emily Myers, NAAG, fourth edition.

Session #2: January 28

Overview of the Course / Powers and Duties (Part II)

The AG 101 overview continues with the basics, including structure of the office, staff roles and functions, substantive areas of AGOs, e.g. consumer protection, antitrust, environmental protection, civil rights, and criminal enforcement, among others. An

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overview of civil and criminal authority and differences and similarities among AGOs will be provided. Discussion will continue regarding relationships of the AG to the Governor, legislature, and citizens; opinions and their impact; role of the press; and key cases where the independence and authority of the office has been reaffirmed by courts. Gaining an understanding of the culture of the office, as well as the authority of each position/section/division adds to an understanding of how AGs accomplish their goals, meet public expectations, and perform their roles as the states' chief legal officer.

Writing assignments will be discussed, along with grading expectations.

Assignment

AGs – appointed or elected – Class discussion of whether AGs should be elected or appointed. Read Chapter 3, Common Law Powers, *State Attorneys General Powers & Responsibilities*

Review 2 key powers and duties rulings below and be able to explain why these cases are important and what relevance do they bring to bear today.

Shevin v Exxon Corp 526 F.2d 266 (5th Cir. 1976) cert. denied, *Standard Oil Co. v Florida*, 4429 U.S. 829 (1976) (1976)

Feeney v Commonwealth, 366 N.E.2d 1262 (Mass.1977)

Session #3: February 4

Part 1 Conflicts in Representation – Who is the Client?

The AG has a unique role in state government, defending both the state and its departments/agencies and representing the public interest – filing actions to protect the citizens by filing actions in consumer protection, civil rights, antitrust etc. These different roles can sometimes conflict and the AG is uniquely positioned and can handle both functions – unlike private practitioners. These powers & duties for AGs can raise important issues while being very challenging.

Assignment

Read Chapter 4 Status in State Government, *State Attorneys General Powers & Responsibilities*

Read Chapter 6 Conduct of Litigation, *State Attorneys General Powers & Responsibilities*

Part 2 Introduction to Political Aspects of AG Life -NAAG, Other National Organizations and Politics

Attorneys General (AGs) have been highly visible on many partisan issues, including elections. This class will focus both on partisan political activity and how (or not) it impacts the role, profile, and cooperation of state AGs; and discuss the AG national membership organizations such as the Attorney General Alliance (AGA) and the National Association of Attorneys General (NAAG). The political organizations are the Republican Attorneys General Association (RAGA) and the Democratic Attorneys General Association (DAGA).

Assignment

Please review the NAAG website and learn as much as possible about NAAG.

<https://www.naag.org>

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Session #4: February 11

Fundamentals: Consumer Protection- Privacy /Multistate Investigations 101

AGs are key advocates for consumer protection, and their enforcement authority derives from consumer protection statutes that give them enormous power. Often AGs are at odds with the business community, both large and small. Prof. Smoyer will focus on the AG role in consumer protection, with emphasis on multistate actions. How does this process get initiated and when, where, and how does it end? Discussion will include case selection and criteria; structure and oversight of a multistate; differences in legal strategy and state laws; use of outside counsel, role of plaintiffs' lawyers, privacy and AG action in this space. Panel includes Kevin Vermillion, Deputy Director, Office of Consumer Protection , Office of D.C. Attorney General Brian Schwalb.

Assignment

Read Chapter 13 Consumer Protection, *State Attorneys General Powers & Responsibilities*

Session #5: February 18

Role of the State Solicitor General

An increasingly important role in the determination of the state's legal policy has been the creation of the position of Solicitor General (SG) in AG offices. Most AGOs now have a dedicated position, the Solicitor General, who oversees and manages the appellate work of the office. In other offices, the person responsible for this function may be called the Appellate Chief. The SG also plays a significant role on national issues and in turn, on national politics to the extent high-profile cases are moving through the courts towards the Supreme Court and having policy impacts, such as the Affordable Care Act and immigration, among many other areas. The Solicitor General represents the state in matters before the U.S. Supreme Court and in other appellate courts. SGs, who coordinate closely on many matters, are also affected by partisan politics particularly on national issues/cases.

Assignment

Read Chapter 23, The Supreme Court of the United States, *State Attorneys General Powers & Responsibilities*

Session #6: February 25

Role of the Chief Deputy Attorney General – Part 1

With few exceptions, the Chief Deputy Attorney General or First Assistant Attorney General is the second-in- command, overseeing the day-to-day legal operations of the AG office and often acting as the AG in his or her absence. No one day is routine and walking into the office, a Chief Deputy often faces many new challenges throughout the day. This session will focus on real-life situations where legal/other decisions must be resolved quickly, efficiently, and often, delicately.

Assignment

Read Chapter 5, Opinions, *State Attorneys General Powers & Responsibilities*

Part 2 AG Role in Antitrust – Ensuring Operation of Free Markets

Attorneys General play a significant role in antitrust, in matters national in scope as well as local issues such as bid rigging and price-fixing. This class will focus on understanding the

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role and legal authority of AGs in antitrust, with the goal of preserving competition and lowering prices of consumers and businesses.

Assignment

Read Chapter 15, Antitrust, *State Attorneys General Powers and Responsibilities*

For discussion: your perspective on role AGs should play (or not) in national economic policy vis a vis their role in antitrust.

Session #7: March 4

Meet the Attorney General

The powers of AGs have expanded as state legislatures prescribe new responsibilities and functions for state government. The focus is on the broad role of AGs in addressing not only the day-to-day functions but also the inevitable emergencies that occur. Discussion will include perspectives on multistate matters as well as AG priorities and the path towards implementation.

SPRING VACATION MARCH 10-16 NO March 11 CLASS

Session #8 March 18

Meet the Attorney General

The criminal law jurisdiction of AGs varies from state to state with only a few offices having full original criminal jurisdiction where the AG functions as the main local/state prosecutor. In many states the AGO has concurrent and/or supplemental jurisdiction and primarily prosecutes murders and other such high-profile cases. This session will explore these roles, with discussion including the legal authority of the AG; relationships with the U.S. DOJ- state-federal roles and coordination where appropriate; and role of local prosecutors vs. AGs.

Assignment

Read Chapter 17, Criminal Justice, *State Attorneys General Powers & Responsibilities* Read Chapter 21, Anti-Corruption, *State Attorneys General Powers & Responsibilities* Optional Reading:

Read Chapter 18, Medicaid Fraud, *State Attorneys General Powers & Responsibilities*

Session #9: March 25

Meet the Attorney General – AGs As State Chief Legal Officers and On Federalism Issues

As the chief legal officers, of their states, AGs confront a range of issues that are sometimes divisive among colleagues around the country. These issues range from conflicts with a neighboring state to pro and con defense of the current Administration. This session will explore these roles and relationship to the state and national government.

Session #10: April 1

Private Sector Perspective on State AGs

Given the power and authority of AGs both at the state and federal levels, and their significant powers -- particularly in consumer protection -- the private sector has deployed partnership and engagement strategies with the AGs. Often, this is welcomed by the AG and his or her staff who may benefit from the legislative, policy and/or legal expertise of

those in the private sector. This panel moderated by Prof Smoyer consists of legal and government affairs professionals on their approaches. Panelists are Michele Thomas, T-Mobile; Mary Dwyer Pembroke, Discover; and Page Faulk, U.S. Chamber of Commerce.

Session #11: April 8

Meet the Attorney General - AGs as Change Agents

AGs can bring great changes to their states through their policy advocacy (including legislative) as well as through litigation and power of the bully pulpit. This session will explore how AGs use their authority to implement change in their states and within their offices.

Session #12: April 15

Meet the Attorney General

The role of AG is complex. The AGO confronts an array of matters daily and no two days are the same. With the roles of defending the state and advocating for its citizens, conflicts can develop and must be managed. The unanticipated crisis must be addressed. Attention must be paid to providing legal advice to the Governor and state agencies. And further, the AG works with colleagues on multistate matters of national interest as well as regional and local. Discussion will focus on the AG's perspective in addressing these matters.

Session #13: April 22 (Final Class)

The class will conclude the course with a review of AG roles and responsibilities. What's your own perspective? Are AGs doing their jobs? Should they be re-elected? Should their authority be enhanced or curtailed? Has state authority expanded or contracted in recent years? And for you, which job do you believe you would like to have in an AG Office and why?

NOTE: Time provided for student evaluation of both professors.