

State Attorneys General Powers and Responsibilities

Edited by
Emily Myers
National Association of Attorneys General

FOURTH EDITION
NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Courtesy Chapter

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*This book is dedicated to Attorneys General
and the men and women who work for them in the
56 jurisdictions. They continue to make an important
contribution to state government and the American legal
system. Without them, there would be no book to write.*

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Acknowledgments

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This book is a collaborative effort, in which different authors with expertise in each substantive area contribute their time and talent. The principal authors are noted on each chapter, but we would like to thank them again here for their hard work and dedication. Many thanks to the following authors:

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CHAPTER 27

The National Association of Attorneys General

By Chris Toth, Executive Director, National Association of Attorneys General

The National Association of Attorneys General (NAAG) is the professional association of the 56 attorneys general and chief legal officers of the states, territories, commonwealths, and the District of Columbia. NAAG's purpose, as stated in Article I of its Constitution and Bylaws, is to provide a forum for the exchange of knowledge, experiences, and insights on subjects of importance to the attorneys general of the states, territories, and district. It fosters local, state, and federal engagement, cooperation, and communication on legal and law enforcement issues. It provides training, research, and analysis to members and their staffs on a wide range of subjects relevant to the practice areas of the attorneys general offices. It assists in the implementation, administration, and enforcement of the tobacco Master Settlement Agreement of 1998.

MEMBERSHIP

In addition to the attorneys general of the fifty states, NAAG also includes the attorneys general or chief legal officers of American Samoa, the District of Columbia, Guam, the Northern Marianas, Puerto Rico, and the U.S. Virgin Islands.

HISTORY

NAAG traces its origins back to September 1907. At that time, a meeting of attorneys general was held in St. Louis, Missouri to discuss possible cooperation in handling antitrust issues involving the Standard Oil Company. After this meeting the attorneys general continued to meet on a regular basis to discuss issues of common interest. At first, there was no formal staff organization that supported the meetings and related activities of NAAG. In 1936-37, the Council of State Governments (CSG) took on the responsibility of handling administrative and planning duties for NAAG. CSG, headquartered in Lexington, Kentucky, also performed similar duties for other government associations, including the National Governors Association.

In 1971, NAAG employed staff for the first time through the Committee of the Office of the Attorney General (COAG). At that time, this committee, which maintained an office in Raleigh, North Carolina, received a federal grant to publish a book on the powers and duties of the state attorneys general, a precursor of this book.

In 1973 NAAG began discussions on establishing a presence in Washington, DC. These discussions culminated in the decision in 1975 to accept an offer from CSG to provide the services of a part-time attorney in Washington, DC. This arrangement existed until 1980, when NAAG closed its Raleigh office, separated from CSG, and set up its own office in Washington, DC with dedicated staff.

NAAG operates as an unincorporated association that is considered by the federal government, for tax purposes, as an instrumentality of the states.

GOVERNANCE

NAAG's purpose, governance, and functions are directed by a constitution that has been in effect during its operation as an independent institution. In 2011, a new streamlined constitution was approved by the NAAG membership that merged the previous constitution and attendant by-laws, resulting in an improved and modernized governance structure. The NAAG constitution provides direction for the structure and organization of NAAG leadership, policy-making tools, and financial and administrative operations.

LEADERSHIP

NAAG is governed by an executive committee consisting of twelve members. Those members are the NAAG President, President-elect, Vice-President, Immediate Past President, East Region Chair, Midwest Region Chair, South Region Chair, West Region Chair, the Chair of the NAAG Mission Foundation, and three appointees of the NAAG President, at least one of whom must be from a political party other than the President's. The four officers of the organization: President, President-elect, Vice-President, and Immediate Past President, are the constitutional officers of the organization. The constitution requires that the four officer positions rotate equally among members of the four geographical regions. Each term of office is for one year.¹ All decisions of the Executive Committee are approved by a simple majority. The day-to-day operations of NAAG are managed by an executive director and staff.

NAAG REGIONS

The NAAG Membership is divided into four regions: East, Midwest, South, and West. Each region selects a chair and vice-chair each year. The regions are also responsible for nominating a member to serve as NAAG Vice-President, when it is the region's turn in the officer rotation. NAAG staff provides direct support for the East, Midwest, and South regions. The West region has its own independently functioning support staff and budget that operates under the umbrella of the Conference of Western Attorneys General (CWAG). The membership of the respective regions is as follows:

East—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, US Virgin Islands, Vermont

Midwest—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, Oklahoma, Wisconsin

South—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia, West Virginia

¹ In 2018, because of a change in NAAG's fiscal year and meeting structure, the officers serve for 18 months. Thereafter, the term returns to one year.

West—Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Northern Marianas, Oregon, South Dakota, Utah, Washington, Wyoming

THE NAAG MISSION FOUNDATION

The Mission Foundation is a 501(c)(3) not-for profit Delaware corporation established in 2000 with residual funds from the 1998 Master Settlement Agreement between NAAG and the major tobacco companies.² The purpose of the Mission Foundation is to benefit NAAG by supporting education, training, and research programs for its membership and staff, assist the Association in carrying out its responsibilities under the tobacco Master Settlement Agreement, support NAAG Presidential Initiatives, support NAAG committee work, assist with substantive programming such as meetings and seminars, underwrite best practices and office reviews, and help provide office space for NAAG use. The Mission Foundation is governed by a seven member board of directors that consists of the current NAAG officers and three attorneys general appointed by the NAAG Executive Committee that serve staggered three year terms. The NAAG Executive Director serves as the chief executive officer of the foundation. Among the major beneficiaries of the Mission Foundation is the National Attorneys General Training and Research Institute (NAGTRI).

THE NATIONAL ATTORNEYS GENERAL TRAINING AND RESEARCH INSTITUTE (NAGTRI)

NAGTRI is the training and research arm of the National Association of Attorneys General. NAGTRI was founded in 2007 by direction of the NAAG Executive Committee. NAGTRI was created to address a serious training gap for state attorney general staff. The creation of NAGTRI began a significant redirection of NAAG staff toward the fulfillment of essential and timely training needs, as well as critical research projects.

The mission of NAGTRI is to provide high quality, non-partisan, and innovative training and research and other developmental resources to support state and territorial attorney general offices. NAGTRI offered its first calendar of courses in 2008, holding 13 courses, reaching 800 students. By the 2016-2017 academic season, NAGTRI offered 105 courses reaching over 5000 students. In addition to offering a robust schedule of national courses attended by staff from all attorney general offices, each year NAGTRI conducts numerous mobile trainings, where a national faculty is brought to a specific state office to train many attorneys at once from the same office. Underwritten by the NAAG Mission Foundation and NAGTRI Endowment, as well as federal and other sources, NAGTRI offers training at no cost to the students or their offices.

The NAGTRI method of course instruction emphasizes interactive “learn by doing” elements and a strong focus on ethics. Courses focus on the “nuts and bolts” elements of attorney general legal practice. General litigation and trial skills courses, such as appellate advocacy, legal writing, trial advocacy, depositions, and negotiations are among the most requested courses. Specialized courses that have been offered include those dealing with aspects of advanced trial advocacy, appellate advocacy, charities fraud, consumer protection, criminal law, cybercrime, environmental issues, ethics, habeas corpus, health law, human trafficking, intellectual property theft, IT issues, legal writing, management, mortgage fraud, motions practice, overdose investigation and prosecution, preserving public integrity, representation of state agencies, state defensive litigation, and trial advocacy.

Beginning in 2016 NAGTRI began moving to a “center” concept whereby it would allocate resources to areas of critical importance by creating centers for expertise and excellence. By 2017, three such centers had been created: the Center for Leadership Development, the Center for Ethics and Public Integrity, and the Center for Consumer Protection.

NAGTRI has also greatly ramped up its research services in recent years, including providing newsletters and databases for use by attorney general offices. NAGTRI has also commenced the publication of numerous professional resources such as *Evidentiary Foundations for Government Attorneys*, the *Veterans Legal Manual*, and *Preparing for the Unexpected: A Disaster Preparedness Manual for State Attorneys General*.

NAGTRI has increasingly taken on an international profile. In 2014 NAAG signed a memorandum of understanding with the Bureau of International Narcotics and Law Enforcement Affairs of the U.S. Department of State to provide legal trainings to other nations. A number of such trainings have occurred each year around the world. In 2011, NAGTRI launched the International Fellows

Program. This program brings together elite government attorneys from the US and abroad to explore in-depth issue of common importance, such as human trafficking and government corruption. In the Program's first seven years it hosted 146 attorneys from 58 different nations.

NAGTRI is governed by the NAAG Training Committee consisting of multiple attorneys general. The Training Committee in turn receives input from the NAGTRI National Advisory Board, which includes chief deputies, special assistants, office training coordinators, and senior faculty from every attorney general office. Day to day support is provided by a director and staff.

NAAG POLICY-MAKING INSTRUMENTS

NAAG can create association policy on various issues of interest and concern to the attorneys general through three methods delineated by its constitution: sign-on letters, resolutions, and Executive Committee interim policy.

Sign-on letters are letters on a particular issue that require a co-sponsor from at least one member of each political party to initiate circulation to the general membership. In order for a sign-on letter to become association policy, at least 36 attorneys general must join the letter. Sign-on letters typically address legislation pending before Congress, but also have been sent to government agencies concerning rulemaking issues, as well as to private entities regarding corporate actions and policies.

Resolutions can cover any issue of interest or concern to attorneys general. As is the case with sign-on letters, a resolution requires sponsorship by at least one member from each political party. Resolutions are taken up by the full membership during a plenary business session and are approved by a voice vote unless a roll call vote is requested by five members, or the issue involves an authorization of legal action by the Association. In either of those cases, an affirmative roll-call vote of 36 members is required.

NAAG COMMITTEES

In addition to the Executive Committee, the NAAG Constitution allows for the creation of standing committees by a majority vote of the Association at any regular or special meeting. Special committees, ad hoc committees, task forces,

and working groups can likewise be formed by the vote of the membership, or solely by the NAAG President. This process allows NAAG to both address issues that perennially face the membership, and issues that may be relevant only for a short period.

NAAG's standing and special committees allow its membership to provide an increased focus on important issues, and provide potential plans of action for the general membership. As of 2017, NAAG has standing committees for the areas of Antitrust, Civil Rights, Consumer Protection, Criminal Law, Energy and Environment, Finance, Tobacco, and Training. A number of different NAAG working groups and task forces have existed over the years, depending on the pressing issues facing the membership at a particular time. As of 2017, there were thirteen special committees, including Consumer Financial Protection Bureau Working Group, Executive Working Group on Prosecutorial Relations, Gaming, Human Trafficking, Internet Safety/Cyber Privacy and Security Committee, Substance Abuse Committee, and Veterans Affairs.

NAAG CENTERS

NAAG's centers provide specialized support for its membership in two vital areas. This support includes the provision of technical expertise, litigation assistance, information updates, and provision of training and research through NAGTRI. In addition, the NAAG centers facilitate the development of community and sharing of information among attorneys of the same discipline throughout the membership.

The Center for Supreme Court Advocacy provides vital support to the appellate advocacy efforts of the attorneys general. The Center director coordinates and serves on numerous moot courts of attorney general arguments each US Supreme Court term. In addition the Center assists with editing and reviewing Supreme Court and appellate briefs filed by the attorneys general. The Center also hosts six Supreme Court Fellows each year. The Fellows, who are assistant attorneys general from around the country, are chosen through a competitive program, and hone their appellate skills through assistance with moot courts and brief editing during the nine month US Supreme Court term.

The Center for Tobacco and Public Health was created in response to the specific roles NAAG was given under the terms of the 1998 Master Settlement Agreement (MSA) between the four largest American tobacco companies and

the attorneys general of 46 states. See Chapter 21 for a thorough discussion of the NAAG Center for Tobacco and Public Health.

OTHER SUPPORT

In addition to the above areas, NAAG provides support to the attorney general community in a variety of ways. Two of the most significant are Management Reviews and support to the Society of Attorneys General Emeritus.

Management Reviews

One of the most significant developments in recent years has been the increasing demand from attorneys general for NAAG management reviews. These reviews can be as broad or narrow as the requesting office desires. The review team consists of management level staff and subject matter experts from other attorney general offices. Following preliminary review of documents, processes, and organizational structure, the review team will spend three to five days on-site interviewing staff, reviewing procedures, and gathering information. After the on-site visit, the team will draft a preliminary report for the requesting office. A final report will not be provided until the requesting office is completely satisfied with the preliminary draft. A management review is provided at no cost to the requesting office.

Society of Attorneys General Emeritus

The Society of Attorneys General Emeritus (SAGE) is an informal group of former attorneys general who continue to network addressing a wide variety of interests and issues. NAAG provides logistical and administrative support to SAGE.

Support for Multistate Investigations/Litigation

One of the most effective enforcement tools an attorney general employs is when he or she joins with colleagues in initiating an investigation or bringing an action. Such multistate investigations and litigation are growing in frequency and have been successfully employed in various contexts such as antitrust, consumer protection, and environmental matters. NAAG often plays a vital coordinating role in multistate matters by facilitating communication and acting as a central point of contact among the attorneys general.