

Latham Attys Stress Gov't Chops Amid Enforcement Ramp-Up

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Kevin Chambers

Danielle Conley

Nicholas McQuaid

Jonathan Su

Law360 (December 22, 2022, 4:53 PM EST) -- As Latham & Watkins LLP expands its white collar defense and investigations team, two attorneys who recently joined the firm from the White House and the U.S. Department of Justice say their kind of government experience will be crucial as clients anticipate an uptick in enforcement actions and investigations.

Kevin Chambers returned to Latham this month after leaving last year for the DOJ, where he was an associate deputy attorney general and directed COVID-19 fraud enforcement efforts. Danielle Conley, meanwhile, joined the firm in October after serving as deputy White House counsel. She is a former WilmerHale partner who also previously worked in the Justice Department.

Chambers is not the only Latham partner to return to the firm after leaving for a post in President Joe Biden's administration. This fall, the firm also brought back Nicholas McQuaid, who served as acting assistant attorney general and then principal deputy assistant attorney general for DOJ's criminal division. A third former partner, Jonathan Su, came back following a stint as deputy White House counsel.

Chambers, who has now served twice as a federal prosecutor, told Law360 Pulse that he and his colleagues' public-sector experience puts Latham in a unique position to guide clients.

"I think in the years to come ... clients are going to be dealing with inquiries, investigations, whistleblowers [and] enforcement regimes in a way they really have not had to before," Chambers said.

Law360 Pulse recently spoke with both Chambers and Conley about what drew them from government to Latham, the rise in workplace culture reviews and trends they will be watching in 2023.

This interview has been edited for length and clarity.

Why did you decide to leave government service for Latham at this time?

Chambers: As far as I'm concerned, there's really no greater calling for a lawyer than to spend some time in government service. I've done it twice. I've enjoyed both experiences tremendously.

But having done it for a total of about six years, I thought the time had come to go back to something else that I really also enjoy, which is counseling my clients on some of the thorniest or more complex issues that they face.

I spent six years at Latham before going to DOJ this past tour. I got to see firsthand the breadth of experience across the firm, the really unparalleled platform that Latham has to offer both its clients and its and its lawyers.

Another thing that impressed me about Latham and drew me out of government was the deep and long-lasting relationships that my partners built with their clients. Clients always came first. They were a critical part of any decisions that were made on cases.

Conley: Like Kevin, I loved my time in government. And like Kevin, it was my second tour of duty.

After 18 months, I felt like I had the opportunity to do and see a lot, and I was ready to return to the private sector and help clients navigate some of the sticky issues I know they'll be facing in the years to come.

I was attracted to the enormous talent of the white collar team. I worked day in and day out with Jonathan Su in the White House and have known both Kevin and Nick — and several others who are part of the white collar team at Latham — for years. It's an incredibly dynamic and diverse team with a wide breadth of experience in both the public and private sector.

How do you feel that your work in government informs you now in the private sector?

Conley: A lot of our clients are facing regulatory issues and other issues with the government. Having had two different roles, both in the White House and the Justice Department, I think I have a good handle on the way the government may think about certain issues.

There are very real parallels between private sector work and the kinds of positions that Kevin and I held in government. We were dealing with very high-profile matters that are extremely sensitive and that require lawyers with really good judgment who know how to work under pressure — and that's the same thing with the kinds of issues facing Latham's clients.

Chambers: In our jobs, we had the opportunity not only to see behind the curtain and understand how government works, but we also had to deal with some of the most difficult issues.

Now, returning to Latham with that experience, with knowledge of how DOJ works at the highest levels

and understanding where its priorities are, it's very helpful.

The department recently released its new policy on corporate criminal enforcement. Nick McQuaid worked closely on that initiative, and I co-chaired the department's corporate crime advisory group, so we have a really unique and central understanding of what's important to DOJ.

One area where Danielle Conley advises clients is on workplace culture reviews. Are these kinds of reviews on the rise? And if they are, what is driving that?

Conley: Are they on the rise? The answer is absolutely.

Over the past few years, in the wake of the #MeToo movement, the Black Lives Matter movement, and the murder of George Floyd, employees have been laser-focused on corporate culture, including how a company treats its employees.

Employees really are holding executives' feet to the fire when it comes to issues like how they're responding to complaints of discrimination and inequity, and what company leaders are doing to advance diversity, equity and inclusion from within. And we've seen more and more employees who point to the company's culture as their principal reason for leaving a company.

So while many companies used to be principally focused on simply responding to specific complaints, many are now proactively doing these kinds of reviews and audits of anti-harassment compliance programs, and policies and practices on things like hiring and promotions, as well as looking at their DEI policies, to ensure that the overall culture promotes fairness and inclusivity.

Shareholders of public companies are increasingly putting pressure on public companies when it comes to these sorts of cultural issues.

So, for example, over the past couple of years, there's been a significant uptick in shareholder proposals for companies to conduct racial equity and civil rights audits. That's a trend we'll expect to continue to see going into the next proxy season.

In light of these cultural shifts, many companies are going to outside law firms like ours to do those reviews for them.

What are you keeping an eye on in the new year as far as white collar enforcement trends or other issues?

Chambers: We're entering a period of economic uncertainty, in some industries more than others. When that happens, historically, companies sometimes have to make difficult decisions about headcounts or where to dedicate their resources — and when that happens, we see an uptick in several types of risk exposure.

I would say you're going to see an increase in allegations of employees, or management, bending or breaking the rules in order to achieve certain results, or otherwise inflating performance figures in order to avoid consequences of not hitting performance metrics.

We also expect the DOJ and other regulators to take a more aggressive posture when it comes to investigating alleged corporate misconduct.

Government regulators will be placing a lot more emphasis on compliance structures — asking what companies did before a bad act happened. And the DOJ has also been very strict when it comes to deciding whether or not to grant a company cooperation credit. So counsel who are representing these companies need to really understand the change and be fully aware of these new policies.

Lawyers who just say that nothing has changed since the new memo, they're going to be in for a rude awakening. Companies have to invest in their compliance structures, and they're going to be rewarded for quick, thorough and decisive action. That includes, where it's appropriate, early disclosure to DOJ or other regulators.

At the same time, when allegations are unfounded, or the government is overreaching, companies are going to need counsel who are going to aggressively defend the company and clarify any misunderstandings or mistakes that support the government's position.

Conley: Harassment and discrimination claims have always been among the most frequent complaints brought by employees. But in light of the current climate, we are seeing a significant uptick in employee complaints about a wide range of workplace issues — from sexual harassment, to race discrimination, to pay inequity, to bullying, and broader concerns about a company's culture.

These are the kinds of complaints — especially when they involve allegations against senior leaders of a company, as well as when those allegations are systemic in nature — that really do carry substantial reputational risks and need to be thoroughly investigated and handled with great care. That's an area where we have particular expertise.

I also think we're likely to see significant enforcement activity around environmental, social and governance issues. Over the past few years, ESG issues have increasingly been in the spotlight for regulators and on the Hill. Just as one example, last year, the SEC announced the creation of a climate and ESG task force to proactively identify and pursue ESG-related misconduct. So that's something else that we're definitely keeping an eye on.

What do you think could be topics of investigation in the corporate world under the new Congress?

Conley: We've been thinking about this a lot. Our congressional investigations practice is principally headed by Jonathan Su and Nick McQuaid.

A few of the things we think that the incoming Republican House is likely to focus on are the use of government funds, including pandemic-related relief, and ESG implementation. I'll note that the ESG issue is also likely to be a focus of Senate Democrats. That makes that issue, I think, particularly important.

The House Republicans will also be focused on the technology industry, including looking at issues like censorship, the health care industry, and private-sector engagement with China, particularly related to supply chains, technology theft and cybersecurity.

--Editing by Rich Mills.

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