

Amplified Lawmaker Scrutiny Drives Hiring At Jenner & Block

By Alison Knezevich

Law360 (November 23, 2022, 4:36 PM EST) -- Jenner & Block LLP has been busy building its team that helps clients navigate congressional investigations and other intense public scrutiny, recently turning to attorneys with experience in high-profile government probes.

For instance, the firm announced Nov. 16 that it had added special counsel Marcus A.R. Childress, who served as investigative counsel for the committee probing the Jan. 6 attack on the U.S. Capitol. The firm said Childress will play a significant role in its congressional investigations practice.

That practice is chaired by Emily Loeb, who returned to Jenner & Block's Washington, D.C., office in September after serving as an associate deputy attorney general in the U.S. Department of Justice. Loeb also co-chairs the government controversies and public policy litigation practice, which focuses on guiding clients through crises.

Other additions in recent years include Aaron Cooper, a former DOJ prosecutor and lead Minority counsel in the Senate investigation into Russian interference in the 2016 presidential election; Ann O'Leary, the former chief of staff to California Gov. Gavin Newsom and Michelle Kallen, a former solicitor general of Virginia and special litigation counsel to the Jan. 6 committee.

Law360 Pulse caught up with Loeb this week about why the firm is focusing on congressional investigations and government controversies, how the landscape for investigations has changed and what the Republican takeover of the U.S. House could mean for this space.

This interview has been edited for length and clarity.

Jenner & Block has been expanding its congressional investigations team. What are the factors that led to the firm focusing on this area now?

In the congressional investigations space — and more broadly in the practice that we at Jenner call our government controversies practice — we've seen that, increasingly across industries, business-reputation legal issues often arise in multiple arenas at once.

Congress is demanding to hear from a CEO, even while internal and regulatory investigations are getting



Emily Loeb

off the ground, while at the same time, state AG's may be asking questions and demanding documents, and parallel civil litigation proceeds at pace.

We're now even seeing the EU's Parliament pick up on the tactics of Congress, asking for executives to appear and provide testimony — and transcripts of the testimony can be relied upon by federal investigators and later appear in civil litigation on the same topic.

So clients must be prepared regardless of the forum, and these types of multifaceted matters have become a bigger part of our overall practice.

Another factor is that, as more clients have recognized the risks of these multifaceted matters, they've been engaging us early to be proactive, to mitigate risk on their high-priority initiatives — so they can be prepared for questions before they're asked and not caught flat-footed when it's too late.

You chair the firm's congressional investigations practice, but you also co-chair the government controversies and public policy litigation practice. How do those areas overlap?

We work as one team at Jenner, and our congressional investigations team draws from the specific experience of other partners across the firm with specialized expertise. Particularly on the multi-dimensional matters we were just discussing, we have an incredibly deep bench.

We have two co-chairs of mine, of the government controversies practice: firm chair Tom Perrelli, who's a former associate attorney general at DOJ, and Ann O'Leary, who's a former chief of staff to Gov. Newsom of California. But we also have a state AG's practice where we work collaboratively with my partner Brian Hauck, who's also a veteran of the Department of Justice, and others.

The other two practices that come up a lot are the investigations, compliance and defense practice, as well as our antitrust and competition law practice when it relates to antitrust investigations and mergers.

So we really draw from the full complement of lawyers across the firm to help our clients think through these multifaceted matters in a strategic way.

How have recent hires strengthened the team, and have you been making concerted efforts to hire people with government experience?

Yes, absolutely. Engaging with congressional staff has always required seasoned and experienced counsel because congressional investigations have unusual rules and norms that are not like any other area of the law.

But the political ecosystem is dynamic; it's not static. The rules and norms around congressional investigations shift over time. And importantly, the public's more engaged with what is happening in Washington. In today's media environment, it's just critical for our clients to be able to get it right the first time.

So we've been quite intentional here at Jenner to build a team that's uniquely positioned to serve clients to advise on these high-stakes matters that are really at the intersection of law, policy, government and media scrutiny.

These lawyers have seen different types of congressional investigations proceed from various vantage points. They've seen these issues as congressional staff, in the federal government, as state officials and, of course, in high-profile congressional investigations and private practice.

I really believe that this experience allows us to better prepare witnesses and to see around corners to help our clients devise a holistic strategy.

What do you think are the most significant ways that congressional investigations have changed over time?

The political and media ecosystems have become incredibly fast-paced, with a high level of public and consumer engagement, and this has raised the business reputation stakes when the spotlight hits from Washington.

There are really no longer any silos. So entities will be at risk of getting caught and losing credibility with regulators or members of Congress if they say one thing in one arena and something else in another.

In the past, the public didn't have as much access to information about ongoing investigations, whether it be congressional or enforcement agencies — but social media has changed that. With one post, an issue can go viral and bring awareness to a broad base of consumers to situations that traditionally were only read about in print media.

So we regularly see political leaders utilizing the power of social media to bring awareness to allegations. Because of this fast-paced dynamic, businesses are under understandable pressure to respond in a fast-moving way to conversations that are happening online and in Congress. But that can be in tension with the lawyers' traditional preference that you have all the facts before you answer a question.

I think we're better able to serve our clients now because we understand these pressures and the risks. We don't provide legal advice in a vacuum. We instead strategically counsel our clients with an understanding of this broader dynamic.

With Republicans retaking the U.S. House in the midterms, what do you think will change when it comes to congressional investigations?

Traditionally, congressional investigations of private industry decrease when Republicans take control of Congress. But I don't see that trend continuing under this House majority. It appears that Republican members are more than willing to investigate private industry, and I believe it'll likely cut across many industries.

Congressional investigations can be triggered by a range of events. For example, if there's a situation that causes a public outcry on social media, that can lead to a congressional investigation. Stories in the press can lead to inquiries from Congress. But there are also investigations of the federal government that ensnare private enterprise.

So I don't see a slowdown in work the way that there may have been traditionally when Republicans take control of a house of Congress.

--Editing by Dave Trumbore.