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NEWS FOR THE PROFESSION

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## NEWS

### State solicitor general appointments open doors for appellate practitioners

By Peter Page  
STAFF REPORTER

A trend among states in recent years to appoint a solicitor general has increased opportunities for young attorneys to get into court and ultimately return to private practice far from Washington, the traditional heart of the nation's appellate bar.

In the past decade, a dozen states, including California, Florida and North Carolina, have added state solicitor generals, many of whom oversee large staffs, said Dan Schweitzer, Supreme Court counsel for the National Association of Attorneys General. Nationwide, 37 states have a solicitor general, he said.

"There are a lot more appellate positions that attract top-notch lawyers," Schweitzer said.

Solicitors oversee the appellate operation in state attorney general offices. Some large states have sizeable staffs in the solicitor's office. Many attorneys general in smaller states simply have a few experienced appellate attorneys reviewing and coordinating appeals handled by staff attorneys who tried the case, Schweitzer said.

#### Recruiting tool

Caitlin Halligan, who joined Weil Gotshal & Manges in New York as a partner in 2007 after five years as New York's solicitor general, managed one of the largest state solicitor offices with 45 attorneys. Many of the younger attorneys had been associates in private practice impatient to get into court, she said.

"It was easy to attract top-notch lawyers because of the opportunity to appear in court at an earlier part of their career on cases of constitutional and public policy importance. That is a tremendous recruiting tool," Halligan said.

Washington, with its unique opportunities to clerk on the U.S. Supreme Court and work in the U.S. Department of Justice's Office of the Solicitor General, remains the launching ground for the most promising appellate careers, but appointments as a state solicitor general have brought home top legal talent.

"I want to raise my family here," said Kevin C. Newsom, 35, a native of Birmingham, Ala. He joined Bradley Arant Rose & White in Birmingham

as co-chairman of the firm's appellate group in 2007 following service as state solicitor general.

Newsom clerked for Justice David H. Souter before joining Covington & Burling in Washington in 2001. He was named Alabama solicitor general in late 2003. He argued three U.S. Supreme Court cases as solicitor general and took some cases with him into private practice, winning a voting rights case on behalf of the state, *Riley v. Kennedy*, No. 07-77, and obtaining a rare summary reversal in a habeas case that he had lost in the 11th U.S. Circuit Court of Appeals as solicitor general. *Allen v. Siebert*, No. 06-1680.

"Setting up an appellate practice in Birmingham would have been hilarious 15 years ago, but I can practice anywhere with phone, e-mail and Internet. I am writing briefs 98% of my time. Two percent of the time I am flying to a court to talk for 30 minutes."

Texas native R. Ted Cruz, who clerked for Chief Justice William H. Rehnquist in 1996 and was a founding member of the 2000 Bush presidential campaign, was a rising Washington star when he got a call to serve as Texas solicitor general. In December 2002, while he was serving as chief of policy at the Federal Trade Commission, a friend called to ask if his name could be considered as Texas solicitor general.

"Until my buddy called, my plan had been to continue serving the [Bush] administration," Cruz said. "I talked about it with my wife and called the next day to say I would be honored."

#### A 'liberating' experience

Cruz was appointed in 2003. He authored 70 U.S. Supreme Court briefs and argued eight times before the high court before joining the Houston office of Morgan, Lewis & Bockius.

"Trial work can require you to be on location for weeks or months, but an appellate appearance can be an hour long. It is quite liberating geographically," Cruz said. "The vast majority of my work is researching and writing briefs, which can be done anywhere."

Gary Feinerman was appointed as Illinois solicitor general in 2003 and last year joined Sidley Austin in his home town of Chicago following service.

He launched his career in the 1990s with a

Supreme Court clerkship for Justice Anthony M. Kennedy, and service in the Clinton administration Department of Justice and the Office of the Counsel to the President. He returned to private practice at Mayer Brown in Chicago before accepting appointment as Illinois solicitor general.

"I returned to Chicago because it is my home and there is a very robust appellate community here," Feinerman said. "Being outside of D.C. gives us perhaps greater opportunity to handle cases before the regional courts of appeals and the state supreme and appellate courts. We are here on the ground and more familiar with those courts than D.C. lawyers."

Judge William Pryor of the 11th U.S. Circuit Court of Appeals, who as Alabama attorney general appointed Newsom as state solicitor general, said his offer of plenty of time in court often persuaded aspiring appellate attorneys to choose a public job, at least for a few years, over a private-firm salary.

"I hired talented lawyers not many years removed from law school and perhaps [with] a clerkship at the Supreme Court. They were doing fulfilling work, but they would not have any opportunity any time soon to handle high-profile matters before the Supreme Court," Pryor said. "I told young attorneys interested in criminal law, and particularly death penalty cases, that they would be arguing before the Supreme Court of Alabama, probably in their first year. That is just not going to happen in private practice."

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