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by Hill B. Wellford, FCEC Newsletter Editor *

Antitrust Division Leadership Changes: Major Reorganization or No Big Deal?

The past two-month period was a busy time for leadership changes in the DOJ Antitrust Division. Changes include the departure of one Deputy Assistant Attorney General, the addition of two more, and a rotation in the leadership of the Economic Analysis Group. Changes to the Office of Operations also are in the works, with the possible creation of General Counsel.

Changes at the Economic Analysis Group

The Division's Economic Analysis Group consists of economists and financial professionals organized into three sections—[Competition Policy](#), [Economic Litigation](#), and [Economic Regulatory](#)—overseen by the Director of Economics, a career staff position. EAG reports to the appointed DAAG for Economics, Carl Shapiro. In early October, Shapiro announced that **Ken Heyer**—the longstanding Director—has switched positions with the former chief of the Competition Policy section, **Bob Majure**. The change reflects a decision to make the Director of Economics into a three-year rotating position, rather than one of an indefinite term. To ease the transition, Heyer—who in addition to serving as Director has numerous times served as acting DAAG for Economics—will continue to serve in an EAG-wide training role, will continue to lead EAG recruiting for a period, and will serve as a special advisor to the front office.

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Changes to Civil DAAGs

Former Simpson Thatcher & Bartlett LLP partner **Joseph Wayland** joined the Antitrust Division in late September as DAAG for Civil Enforcement (see his law firm's [press release](#)). Wayland, a graduate of Columbia University Law School (JD) and Georgetown University Law Center (LLM), was a general litigation partner in New York, where he handled antitrust cases among other extensive trial work. He replaces **William Cavanaugh**, another New York general litigator, who, this summer, returned to private practice and became co-chair of his former firm, Patterson Belknap Webb & Tyler LLP.

Molly Boast, the other DAAG for Civil Enforcement, remains at DOJ. In 2009, AAG Christine Varney established that the two civil enforcement DAAGs will share oversight responsibilities on a case-by-case basis, rather than overseeing particular civil litigation sections as was the case under several prior AAGs. Thus, it is too early to tell which matters Wayland will handle.

Former Cravath Swaine & Moore LLP partner **Katherine Forrest** joined DOJ in late October as the DAAG for International, Appellate, Policy and Operations matters (see a summary of her bio and quotes from her firm in this [Law360 article](#)). Forrest, a graduate of the New York University School of Law, was a competition partner in Cravath's New York office, where she (like Boast) focused her career on antitrust litigation and counseling. Forrest assumes the slot vacated by former DAAG **Philip Weiser**, who since 2009 was on detail to President Obama's Council of Economic Advisers. Weiser was recently appointed to the President's [Economics and International Trade Team](#).

With Boast, Forrest, and Wayland, the Antitrust Division now has former New York law firm partners occupying all three of its civil DAAG positions. AAG Varney, however, hails from the Washington, DC office of Hogan & Hartson (now Hogan Lovells).

Changes to Civil Operations; a new GC?

DOJ leadership is currently considering changes to the structure and reporting relationships of the Antitrust Division's civil enforcement career staff. The exact scope of the changes has not been announced. Articles in *The Deal Pipeline* on [October 7](#) and [October 27](#)* suggested that the moves are aimed at giving political appointees oversight at earlier stages of investigations, and at generally increasing political appointees' control. Career staff contacted for this article (who declined to speak on the record) had widely varying views, and had not received any final guidance from Division leadership.

Two changes appear clear. The first is that Forrest's DAAG position will soon include oversight over the Division's [Office of Operations](#), the staff leadership group that handles everything from staff supervision of the litigating sections to clearance battles with the FTC. This "Operations DAAG" structure will be a change from previous practice: the position, formerly described as DAAG for International, Appellate and Policy, will add "and Operations" to its title. Currently, the head of the Office of Operations is a career staff position, whose occupant simultaneously has the title of Director of Operations and Director of Civil Enforcement. The Director of Operations title will be phased out in favour of the Operations DAAG but the career staff position of Director of Civil Enforcement will continue to exist. Division leadership is considering whether to have the Director of Criminal Operations also report to Forrest as DAAG; however, that Director will continue to

report simultaneously to the long-time career staff DAAG for Criminal Enforcement, Scott Hammond.

The Director of Operations/Director of Civil Enforcement position previously reported to all appointed Civil DAAGs; access to the AAG was frequent but was not, technically, a direct report. Under the new system, the Operations DAAG will report directly to the AAG. The Director of Civil Enforcement will report to the Operations DAAG. But access to the AAG by all senior leaders (career staff or appointed), whether or not as direct reports, is expected to be unchanged as a practical matter.

The second clear change is that the Antitrust Division will create a General Counsel position, similar to the one used at the FTC (where Varney served as Commissioner from [1994 to 1997](#)). The GC's office may assume duties involving the Freedom of Information Act, judgment compliance, ethics, and training, which currently are managed by the Civil and Criminal Directors of Enforcement. It is rumored that Division leadership has discussed offering this first-ever GC position to **Bob Kramer**, who, as the current Director of Operations/Director of Civil Enforcement, oversees many of these functions. (See current titles and personnel at the [Antitrust Division Directory](#).) The GC position will report directly to the AAG.

The creation of a General Counsel position within the Antitrust Division, which is a component of the larger DOJ, would appear to be a first for the agency. DOJ has General Counsel positions in several Bureau and Executive Office level components (for example, for the Marshal's Service and the Executive Office for United States Attorneys), but does not have such positions in other Washington, DC components that are similar to the Antitrust Division (for example, the Tax Division) (see [DOJ Directory](#)).

* Subscription to a free trial may be required to access these links.

No Press Releases for DAAG Changes

DOJ observers may wonder why the additions of Forrest and Wayland and the departures of Weiser and Cavanaugh were not announced in press releases or in the Division's [RSS news feed](#), as DAAG changes were in prior years. There is less mystery here than might be assumed. The Obama administration has established a practice that most political appointees who do not require Senate confirmation (as DAAGs do not) will not receive arrival or departure press releases.

Prior administrations often did not issue press releases for DAAGs outside the Antitrust Division; however, Antitrust DAAGs did receive them, in part due to the perception that such appointments were more newsworthy than those of other DOJ components, and in part as a recognition that Antitrust Division DAAGs tend to be more senior lawyers as compared to DAAGs in other components. The Obama administration simply appears to be taking a different approach.