

WilmerHale Group Co-Leader On Helping Clients In Crisis

By Alison Knezevich

Law360 (November 22, 2023, 1:18 PM EST) -- As Alyssa DaCunha takes over as a leader of WilmerHale's crisis management and strategic response group, she credits her mentors at the firm for demonstrating how to get the best results for clients in an increasingly polarized political environment.

DaCunha was named co-chair of the Washington, D.C.-based group earlier this month, succeeding Jamie Gorelick. She will join Robert Kimmitt in leading the team.

"Learning from them and growing this practice alongside them has been the true professional honor of a lifetime," DaCunha, who also co-chairs the congressional investigations practice, told Law360 Pulse.

The group, which was founded in 2010, guides clients through high-profile incidents, bringing together attorneys from different practice areas to provide a holistic plan. The firm said about 80 of its attorneys have practices that are either primarily or significantly connected to the strategic response group.

Some of the firm's hires since last year include Lauren Moore, a former associate counsel in the Biden White House; Paul Connell, a former chief deputy attorney general in the Wisconsin Department of Justice; Eric Lesser, who was a Democratic state senator in Massachusetts; Jeff Wieand, former counsel to House Republican Whip Steve Scalise of Ohio; and Erin Kuhls, who was senior investigative counsel to Sen. Rob Portman, R- Ohio.

Law360 Pulse recently spoke with DaCunha about the political dynamics affecting the group's work, what she has learned from her mentors and more. This interview has been edited for length and clarity.

What have you learned from your mentors in the practice group?

Ambassador Bob Kimmitt and Jamie Gorelick are the two greatest mentors you could possibly ask for in Washington. Both of them had political careers, but both of them value looking for the middle-ground approach for clients. [Gorelick was a deputy attorney general in President Bill Clinton's administration, and Kimmitt was deputy secretary of the U.S. Department of the Treasury under President George W. Bush].

Particularly if you come from a litigation background, so often, lawyers will approach problems as a zero-sum game with only a winner and a loser. One of the things I've always valued is that they look for solutions and off ramps that allow regulators, or whoever is conducting oversight of our clients, to achieve their goals, while also protecting our clients and protecting their most important business

information and goals, and protecting the reputation of clients, the companies and their leadership. And I think that is an undervalued pathway to success in a very polarized town. So watching them look for these middle grounds and do this to great effect in outcomes that our clients are thrilled with, has been really meaningful.

You mentioned polarization. How does that affect the risks that clients face?

Polarization is absolutely one of the major dynamics impacting our clients right now.

To take one example, you will see a red state attorney general stake out a position on an issue. And while a client is working through its response to that issue, a blue state attorney general sees the news around this and takes exactly the opposite position. Now you have a client that's really stuck. They have operations in both states. They're both politically important states, and now they have to come up with an answer that really is going to make nobody happy. At the same time, you might also have regulators or Congress coming in asking some challenging questions. Now you've got to respond to these questions in four or five different forums simultaneously.

In those situations, we tell our clients, you have to come back to your corporate values. What is your north star? What are your business objectives? It often takes a little bit of crystallizing to think through these issues at the very highest levels of the company to chart out where exactly you need to be. What are the risks and downsides of taking a position that may be unpopular with one side of the aisle or the other, or both sides for different reasons? Figuring out what your business objectives are, what your corporate values are, where you can take a step back from the politically charged dynamics. Do you have to weigh in on an issue? And helping them chart the path that is going to be the least disruptive to the business, and is faithful to where they want to be as a company.

How did the volume and type of congressional investigations this year compare to the past?

The pace of congressional investigations has increased steadily over the past few years. We used to refer to our congressional practice as somewhat of a cyclical practice, meaning it was issue-driven or more active in election years or around particular topics. But a few years back, we realized that the practice is no longer cyclical. It was really a year-in, year-out thing, regardless of which party was controlling Congress.

We definitely saw an uptick in private sector hearings this year. It used to be that when Republicans controlled one or both houses of Congress, their focus was primarily on waste, fraud and abuse in the government, and that's particularly true when you've had an executive branch controlled by a different party. Republicans now also take issue with big business, and they are coming after the private sector just as vigorously as Democrats historically have. So that has made for a very active set of House investigative committees and led to a very busy year.

How does the group bring practice areas together, and why is it important to have that approach?

We specialize in helping look at a problem through multiple different lenses and bringing together the subject-matter experts in a variety of areas, so that we can assess the risks across all facets of an issue and really put ourselves in the shoes of a general counsel, chief legal officer or board of directors. You could have not only your litigators, but you might also have your securities disclosure team, class action litigators and regulatory enforcement lawyers.

One example we often use is, if you have a major brand or reputational issue, your civil litigators might be saying, "Well, don't say that you're sorry, or don't accept responsibility, because that's going to affect our settlements at the end of this with civil plaintiffs or with the government." Our job is to evaluate that, but also to think about what it would feel like as a CEO to testify, and needing to put forward a story that is consistent with the company's values, that may acknowledge that there were things the client could have done better or wishes that they had done differently.

The group says it provides a roadmap to clients to ensure proper steps in the first 24 to 48 hours of a crisis. Why is that important, and how do you handle the early stages?

Often one of the first things to happen when a crisis breaks is you're asked for comment. You find out that you have an issue because the Wall Street Journal or the New York Times asks your CEO for a comment. And every management team's first instinct is to explain, "If we tell our story, everyone will understand."

This creates a couple of risks. One is, you might get out too far in front of your facts. You might not actually know the answers yet. Two is, you might come out with an answer that makes sense in that first setting without thinking about the repercussions across a variety of other settings or how that answer will play with multiple groups.

So where we are brought in early, the first thing we often do is engage with a company's communications team or help them engage a crisis communications firm, so that we can very quickly respond to the press and hopefully take down the temperature on an issue to give us a little bit of breathing room to do our work as lawyers in figuring out the facts, figuring out what is going to be safe ground for us in providing a response, and determining what the next steps will be in responding to press, responding to regulators, and conducting any remediation that is necessary — engaging with all relevant stakeholders, including our workforce, our customers, our investors and any other audience.

--Editing by Nicole Bleier.