

The Texas Lawbook

Free Speech, Due Process and Trial by Jury

Former Texas Solicitor Aaron Nielson: ‘Kirkland is the Perfect Place for Me’

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Aaron Nielson, who resigned last month as Texas solicitor general, is joining Kirkland & Ellis’ Austin office as a partner in the firm’s appellate practice.

A 2007 graduate of Harvard Law School and a former clerk for U.S. Supreme Court Justice Samuel Alito, Nielson has argued six cases before the U.S. Supreme Court and a dozen cases at the U.S. Court of Appeals for the Fifth Circuit.

This is Nielson’s third tour at Kirkland.

“I keep coming back because no firm can match Kirkland’s team of extraordinary lawyers,” he told *The Texas Lawbook* in an exclusive interview. “For almost a decade, I’ve also been a law professor while working for Kirkland’s appellate group. Kirkland has always supported my academic pursuits. Now that I’m a professor at the University of Texas School of Law, Kirkland just made sense.”

“Kirkland also is all in on Texas, and I want to be part of that,” he said. “Because Kirkland has a major national presence, too, no firm is a better platform for me to build on my experience representing Texas. As solicitor general, I used skills I learned as a Kirkland litigator every day, including remaining calm under pressure while executing multistep strategies. One of the things I love about Kirkland is we don’t lose focus on what we are trying to accomplish.”

Nielson pointed out that Texas is “growing fast, and that brings both exciting opportunities and new challenges for the courts.”

“As more companies set up shop here, the courts will see more cases as well as



Aaron Nielson

different types of cases that they haven’t addressed before, including complicated corporate law issues,” he said. “The state has already taken important steps, like creating the new Fifteenth Court of Appeals and new business courts, and I’m confident Texas judges are up to the task, but change is always a process.”

Nielson said he realizes that his passion for the world of academia and corporate legal practice is “an unusual combination.”

“As a law professor, I love to learn and especially love figuring out complicated systems,” he said. “But as a litigator, I also love solving real-world problems for my clients. When I was solicitor general, I loved joining those parts of my personality. Kirkland is the perfect place for me because the firm is built to help clients navigate the law’s most complicated

The Texas Lawbook

issues.”

Kirkland appellate partner *Kasdin Mitchell* in Dallas said Nielson is “a leader who has helped shape the law across Texas and nationally.”

“Even before he served as Texas solicitor general, Aaron argued one appeal in the U.S. Supreme Court, at the court’s invitation,” said Mitchell, who clerked for U.S. Supreme Court Justice Clarence Thomas. “As solicitor general, he argued five more cases in the U.S. Supreme Court and developed appellate strategy for some of the highest-stakes cases in the country.

“He elevates Kirkland’s appellate practice with a rare combination of practical experience and subject matter expertise — from his most recent post as solicitor general to his clerkships on the U.S. Supreme Court, D.C. Circuit and Fifth Circuit, he has exceptional real-world experience and insight into appellate law at the highest level,” she said. “And as a scholar of some of the most pressing issues facing the business community — administrative law, federal courts, civil procedure and antitrust — he has gained deep subject matter expertise that is unmatched in private practice. Aaron will be a significant value-add to clients who are fighting cutting-edge legal issues in bet-the-company litigation.”

Nielson and Mitchell are two of the four Kirkland lawyers in Texas who clerked for Supreme Court justices. The others are George Hicks, who clerked for Chief Justice John Roberts, and Reid Coleman, who also clerked for Justice Thomas.

The Lawbook asked Nielson the following questions:

The Texas Lawbook: What do you think were one or two of your most important victories while Texas solicitor general?

Aaron Nielson: My most important victory for the state of Texas was *Free Speech Coalition v. Paxton*, in which the U.S. Supreme Court upheld Texas’s law requiring online pornographers to keep

children off their websites. Not only did the Court uphold Texas’s law, moreover, but it also agreed with Texas that strict scrutiny should not apply. This means that for generations, Texas and other states will have room to craft new approaches to protecting children.

I also found *Rivers v. Guerrero* to be rewarding. The U.S. Supreme Court unanimously sided with Texas — in an opinion by Justice [Ketanji Brown] Jackson — about how federal habeas works. This case has broad implications for the states. In fact, Delaware, New Jersey and Pennsylvania filed an amicus brief supporting Texas — something that doesn’t happen every day.

Lawbook: With the federal agencies seemingly becoming more relaxed in their regulatory and enforcement actions, there seems to be a focus on state attorneys general becoming more aggressive. Do you see that occurring?

Nielson: States have always been aggressive. What is changing is not their aggression but their sophistication. By strategically building their own teams and partnering with each other and outside counsel, states are now just as able — if not more able — than the federal government to pursue enforcement actions. This is particularly true because multistate coordination is stronger than it has ever been. Clients need to understand this changed environment.

Lawbook: What do you see as the biggest legal issues facing corporate clients and law firms that represent them?

Nielson: The proliferation of regulators. The federal government has extraordinary authority but often zigzags from administration to administration, and within the federal government, enforcers compete to expand their jurisdiction. States are also becoming more sophisticated, and plaintiffs’ lawyers — sometimes acting essentially as private attorneys general — are becoming more sophisticated, too. And regulators over-

The Texas Lawbook

seas are becoming more aggressive, which is something I study as a professor. Over the last several decades, the number of countries exercising antitrust enforcement authority, for example, has skyrocketed. So, businesses that operate in multiple jurisdictions must navigate numerous overlapping but distinct bodies of regulatory law while speaking a consistent message. If a law firm or general counsel's office is focused on a single regulator or issue, there is a very good chance that it will stumble into a different regulatory problem. A smart company must always look at the entire landscape, not just part of it.

Lawbook: Do you have any specific pro bono or public service initiatives that you want to have as a focus?

Nielson: As a teacher, I emphasize to my students why public service and pro bono representation are important. I tell them that my favorite case at Kirkland was a pro bono matter I helped with about federal regulation of raisins, of all things. Regulators required raisin farmers to just hand over a huge portion of their crop to the federal government. That was outrageous, and the U.S. Supreme Court agreed. Now that I'm back at Kirkland, I would love to find another opportunity to represent family-owned businesses who can't afford the type of legal representation necessary to fight back.

Lawbook: What questions am I not asking that I should be asking?

Smetana: The question I get most is "Why wear two hats — both a professor and a lawyer?" Academics sometimes don't understand why anyone would want to do anything but teach and research, and lawyers often don't understand why anyone wants to teach *Pennoyer v. Neff* every year or pick up dusty books from library shelves. But practicing law makes me a better professor, and studying law makes me a better lawyer. The best preparation I know for oral argument in the U.S. Supreme Court is teaching an entire subject and presenting papers about it to faculty colleagues. And my scholarship is better because it reflects what is happening in the real world. Few people better understand what administrative law really is than general counsels.