

Influential Women In Tax: Jones Day's Kathryn Keneally

By Daniel Tay

Law360 (September 9, 2019, 3:42 PM EDT) -- From leading the U.S. Department of Justice's Swiss bank program that collected more than \$1.36 billion in penalties to fostering diversity in the American Bar Association, Jones Day's Kathryn Keneally has earned her spot as one of Law360 Tax Authority's Influential Women in Tax Law.

As a partner in Jones Day's New York office, Keneally works on both civil and criminal tax controversy and government investigations. Brought into the firm in 2017 to help develop its tax controversy practice, Keneally has represented clients in precedent-setting cases. Most recently, Keneally was lead counsel on *Rubin v. Commissioner* in the U.S. Tax Court, which was a case of first impression over whether her clients had properly characterized \$50 million in litigation funding proceeds as long-term capital gain. Keneally's presentations to the Internal Revenue Service led to the agency fully conceding the case in December 2018.

Keneally didn't jump into tax litigation immediately. She was initially drawn to criminal defense work, but it wasn't until Keneally joined a boutique firm, focusing on criminal tax defense and tax controversy, that she realized advocating for taxpayer rights in the tax sphere brought her as much professional satisfaction as advocating in the criminal justice system.

"This is not a profession that necessarily follows a straight line," Keneally said.

Of her victory in *Rubin*, Keneally said that "it was very satisfying as a lawyer to reach that kind of result." She added, "It's the kind you can reach when your adversary is also trying to reach the right result."

It is rewarding to represent someone who has the government "as an adversary," Keneally said, because she is in a position to vindicate that client's interests "in a way that is meaningful to them." At the same time, Keneally said, she respects the government as an adversary because the government is looking to apply the law fairly and reach a fair conclusion.

"It gives you an opportunity not just to win in court, or to reach a compromise, because so much litigation just ends in compromise," Keneally said. "Also, the opportunity to establish that your client's position is actually correct, and have

INFLUENTIAL WOMEN IN TAX LAW



Kathryn Keneally
Jones Day

CAREER ACCOMPLISHMENTS

- Served as counsel in a U.S. Tax Court case of first impression regarding the characterization of \$50 million in litigation funding proceeds as long-term capital gain, getting the IRS to fully concede the case.
- Directly negotiated with the Swiss government on the U.S. Department of Justice's Swiss Bank Program, resulting in over 80 banks coming forward under the program.

your adversary agree and move on, which makes it different from other forms of litigation and highly satisfying.”

The flip side to advocating for taxpayers' rights against the government, Keneally said, was her time as assistant attorney general for the DOJ's Tax Division. Just as advocating for fair treatment of taxpayers against the government was rewarding for her, Keneally said, her time as head of the Tax Division was fulfilling as she worked to ensure the fairness of the tax system.

“There's something very rewarding about knowing every day you're doing your job, that you're doing it to meet a mission and purpose,” Keneally said. “The Tax Division exists because tax touches all aspects of everything — in our economy, our country — and ultimately touches everybody. So you want uniform national enforcement.”

One of her proudest and most well-known moments, Keneally said, was her leading the charge in negotiations with the Swiss government on the department's Swiss Bank Program, announced in 2013. The program laid out a road map for the division and Swiss banks to reach nonprosecution agreements should the banks admit to helping U.S. taxpayers evade tax.

Keneally developed the proposal, met with Swiss representatives and was personally responsible for the terms of the program that the Swiss Federal Department of Finance joined the U.S. DOJ in announcing.

“It was frustrating to the division because what we really wanted was cooperation from the banks,” she said, later adding that “the banks felt they could not cooperate under Swiss law because of Swiss bank secrecy and some issues in the U.S.-Swiss tax treaty.”

The Swiss department's joining in the announcement was key in signaling to the banks that they could cooperate under the program. When the program was announced, Keneally said, she expected six to 12 banks to come forward in addition to the banks already under investigation by the division. But more than 80 banks came forward.

“On a professional level,” she said, it was “a truly remarkable experience.”

Keneally's work ethic shone through during her work on the Swiss Bank Program, according to James Cole, a former deputy attorney general of the DOJ who worked with Keneally on the program.

“I found her to be tenacious. She stuck to it, even when the matters were difficult and kept working at it until we got the results we thought were appropriate,” Cole said.

Cole added that he and Keneally had appeared before a U.S. Senate committee to testify about the department's work on the program, with the committee being under the impression that the department had not made much headway.

“It was our job to educate them on what we had done, and she was very good in trying to point those things out during the hearing,” Cole said.

Steven Miller, who was the acting commissioner of the IRS during Keneally's time at the department, said that in addition to her work ethic, he appreciated her collegial approach and extensive knowledge of tax law.

“
There's something very rewarding about knowing every day you're doing your job, that you're doing it to meet a mission and purpose.”

"We worked incredibly well together ... where we disagreed, there were principled discussions," Miller said. "She was always willing to talk, very bright in terms of how she approached the issues, and she was very collaborative in her approach, which I found very rewarding."

Beyond her legal accomplishments, Keneally said, she is proud of her contributions to diversity and inclusion in the department. Appointed by President Barack Obama — a point of pride for her — Keneally said she worked closely with the Tax Division's advisory committee to enact policies for flexible work schedules and revamp the division's hiring practices to be more inclusive.

In addition, in her leadership roles at the ABA's Section of Taxation, Keneally said, she constantly focused on diversity and inclusion. Mentoring and role-modeling were essential, she said, noting that the ABA had mandatory requirements for diversity representation in continuing legal education sessions.

Keneally also said that she herself had benefited from sponsorship, in which fellow members of underrepresented groups advocate for each other. In particular, Keneally said, she had attained her position in the DOJ because a friend and colleague from the ABA, Miriam Fisher, had recommended her to the position. Because of one person's sponsorship, Keneally said, she was then able to recommend female candidates and candidates from other diversity categories, saying that "in a few key cases, other women advanced because my list [of candidates] was more inclusive than others' might have been."

At her current position with Jones Day, Keneally highlighted the firm's collaborative culture as one of the aspects she values most. The firm, she said, is committed to presenting the proper team for client service, which she values.

"I will say that in terms of professional satisfaction, the greatest satisfaction remains the client who comes in, who just has a problem that is individually affecting them profoundly or is affecting their business," Keneally said. "If it's big dollars, yay, it's exciting. If it's just the biggest problem in that person's life, it is deeply meaningful."

--Editing by John Oudens and Neil Cohen.