

Pension Probe Snags Area Law Firms; Others See Chance to Sign New Clients

The timing could hardly have been worse for the education lawyers at Girvin & Ferlazzo P.C. in Albany.

Each spring, law firms bid to retain or win new contracts to provide legal services to Capital Region school districts.

In mid-April, state Comptroller Thomas DiNapoli punished five attorneys at the Albany firm for "erroneously" belonging to the state pension system.

But the Girvin & Ferlazzo firm has not lost any clients in the two weeks since that announcement, said managing partner Jeffrey Honeywell. "We'll be viable many years into the future," he said.

The firm's situation sheds light on how lawyers may be able to withstand any damage from the ongoing investigation of the state pension fund.

Several area lawyers are preparing appeals and lawsuits against the state government--or positioning themselves to try to pick up clients shying away from firms involved in two statewide investigations.

"There was nothing hidden about this. We had no indication that anything was wrong," said Honeywell, one of four Girvin & Ferlazzo attorneys who were removed from the pension system.

Honeywell said the firm is considering appealing DiNapoli's decision.

Girvin & Ferlazzo represents 70 school districts from Buffalo to Albany, including at least 15 school districts belonging to the Hamilton-Fulton-Montgomery BOCES, an educational co-op.

The BOCES retained the firm to work with its districts, often handling issues such as contract negotiations or employee grievances.

DiNapoli blamed the BOCES for violating pension regulations by reporting the attorneys as employees. That made them eligible to accrue credits that would turn into pension payments when they retired.

The practice of classifying school law attorneys as employees predates Honeywell's career at Girvin & Ferlazzo and the careers of top BOCES officials.

All of the BOCES' school districts have since chosen to stay with Girvin & Ferlazzo, hiring them as independent contractors--which is what should have been done in the beginning, DiNapoli argues.

That work will bring in \$317,300 this fiscal year, Honeywell said--more money than what the firm typically earned when providing services to the districts through the BOCES system.

"Our reputation is everything to us," Honeywell said. "[Clients] are telling us, 'We know you. You've been our attorney for 10, 15, 25 years.' "

DiNapoli's pension probe dovetails with an ongoing criminal investigation by state Attorney General Andrew Cuomo. Cuomo has subpoenaed all BOCES districts in the state, and his probe also includes attorneys that local governments paid for legal services.

The state's \$154.5 billion retirement fund has about 1 million members.

"[The pension] is not the reason we started to provide these services. Admittedly, that's something that flowed from it," Honeywell added. "It's not numbers I could have retired on. Not even close."

Still, several education lawyers in the Capital Region said damage has been done to those who are not involved in the investigations.

Others, such as Latham attorney Mathew Tully, sees the investigations as an opportunity to win new business.

His firm, Tully Rinckey PLLC, plans to spend up to \$1 million this year to open a municipal law division within the practice, headed by Richard Hanft, the former corporate counsel for the city of Troy.

Tully started putting the new team of attorneys together in response to the investigations.

"It's a once-in-a-lifetime opportunity," Tully said. "These are institutional, long-term clients that, if not for these ethical issues, we would not be able to even come close to touching them.

"If we don't assemble this team, 20 years from now, we'll be kicking ourselves."