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State pushed for Foley before bids

Insurance agency sought to hire law firm for pricey Ambac case

By Cary Spivak of the Journal Sentinel

Sept. 6, 2010 | (34) COMMENTS

A state agency asked for permission to hire Milwaukee-based law firm Foley & Lardner for what has turned out to be a multimillion-dollar contract before interviewing either Foley or a competing law firm, newly released records show.

Foley, a firm with close ties to Gov. Jim Doyle's administration, has so far billed nearly \$7.1 million for work it has done advising the Office of the Commissioner of Insurance on the reorganization of Ambac Assurance Co., a complex case that has national repercussions. The case is ongoing, and there is no way to predict how much Foley ultimately will be paid.

Documents released in response to a Journal Sentinel open records request show that on Jan. 24, 2008, Fred Nepple, general counsel for the commissioner's office, sent an e-mail marked "confidential" to Cari Anne Renlund, then the Department of Administration general counsel. The note asked for "authorization to enter into a contract with [Foley and Lardner](#) to provide legal services" regarding Ambac, a New York-based bond insurance company that is regulated by Wisconsin authorities. Renlund forwarded the e-mail to Doyle's office early the next morning.

Nepple wrote that Foley "uniquely offers the depth of expertise, New York office and resources, and flexibility needed to address OCI's legal services needs in this environment."

It wasn't until later on Jan. 25 that a team of Foley lawyers met with [Insurance Commissioner Sean Dilweg](#) and his staff to present their arguments on why they should be hired. Three days later, on Jan. 28, a team of lawyers from Quarles & Brady came in to make their pitch for the job.

The decision to hire Foley was made Jan. 28, said Tom Becker, of Sitrick Brincko Group, a Los Angeles financial public relations firm advising the commissioner's office. Becker said the firms were asked by the commissioner's office to bid for the business "on or about Jan. 24."

Dilweg said he had no problem with the sequence of events. The process was evenhanded, and both firms had an equal opportunity to win the business, he said.

"I gave both a fair shot," Dilweg said Friday. The request for authorization to hire Foley was sent out before the presentations because "my general counsel felt it was important to get the ball moving."

He said the decision was not final until Feb. 5, when Nepple sent Foley a letter to "confirm the engagement" of the firm and to lay out terms of the contract.

Quarles saw no bias

Quarles & Brady attorney Bill Toman said he assumes Dilweg's team was unbiased when it heard his firm's proposal.

"I think I would remember it if I felt I didn't get a fair shake," said Toman, who would have led the Quarles team on the Ambac case if it had won the contract.

He said he had no clue why Nepple would have sought the administration's blessing to hire Foley before Quarles even made its pitch.

"It's not in our interest to criticize the state," Toman said.

Contract is major

The Journal Sentinel reported in July that [the contract with Foley](#) was worth more than four times the next highest sum paid to an outside special counsel for one case since Doyle took office in 2003. The newspaper also noted that employees of Foley have contributed \$355,596 to Doyle's campaigns since 1999, more than any other group from one employer, according to data analyzed by the nonpartisan Wisconsin Democracy Campaign. Second on that list was Quarles at \$268,008.

Marc Marotta, a Doyle confidant who chaired his 2006 campaign and served in the governor's cabinet, is a Foley partner. Dilweg was a top aide to Marotta in the state Department of Administration before being named insurance commissioner in 2007.

Legal observers agree there is a select group of law firms capable of serving as the commissioner's legal adviser in the Ambac case.

\$67 billion Ambac case

The case involves more than \$67 billion of Ambac insurance coverage that Dilweg's office [placed into a special receivership fund](#) after Ambac ran into severe financial trouble because of exposure to risky subprime loans. Overall, the company insures nearly \$400 billion in bonds.

More than 30 law firms representing governments, policyholders and some of the world's largest banks are involved in the case, with many fighting moves made by the commissioner. The case is being heard in the Lafayette County because Ambac is legally based in Wisconsin and regulated by Dilweg's office.

Though Foley was hired by the commissioner's office, all of Foley's bills are paid by Ambac. The insurer is also paying other consultants working for the commissioner. In addition to the Foley bill, the consultants' tab through July was \$12.2 million.

Partner a Doyle friend

David Walsh, the partner leading the Foley team, said he thought that he initially approached state officials when problems with Ambac and the overall economy were emerging. "I do remember them saying they thought we were going to be retained, then I think I remember - I think it was Sean (Dilweg) - saying, 'We should talk to everybody.' "

Walsh said the immensity of the case and the different practice areas that are being used made Foley the logical choice.

"We have a national insurance practice, and this is a national insurance case," he said.

Walsh is a longtime friend of Doyle's. Walsh and his family members have contributed \$64,520 to Doyle's campaigns since 1999, more than any other individual donors, according to the Democracy Campaign.

Dilweg said politics played no role in his choice of Foley. Adam Collins, Doyle's press secretary, did not return calls for comment.

Foley and Quarles have received more state business as special counsel and bond counsel from the Doyle administration than any other law firms. Exclusive of the insurance cases, Foley has been paid \$3.6 million

for work on state business since January 2003, and Quarles has collected nearly \$2.1 million, according to the attorney general's office.

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