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Calling the ethics cops

BY ELIZABETH STULL

Municipalities typically wait for a public scandal to retain outside ethics counsel — a practice they might want to reconsider, one veteran ethics attorney said.

Six months ago, Monroe County Executive Maggie Brooks hired special outside counsel to review the county's personnel and ethics policies, and to ensure its compliance with the ongoing federal ROBUTRAD investigation.

ROBUTRAD, an acronym for Rochester building and trades, was created to provide labor for county projects; but workers also allegedly received county paychecks for private projects.

Brooks appointed ethics attorneys Donald Chesworth and Eugene Welch, partners in the Rochester firm of Harris, Chesworth, O'Brien, Johnstone, Welch & Leone LLP, both of whom are former law enforcement officials. They previously served as outside ethics counsel for the Monroe County Water Authority and the Rochester City School District.

"We're kind of uniquely qualified to do this compliance work and make sure there are no other violations," Welch said Wednesday.

Welch was an assistant U.S. attorney in the Western District of New York and ran the New York State Attorney General's Rochester Regional Office for 15 years as assistant attorney general in charge. He also has led the Monroe County bar Association's ethics committee.

His partner Donald Chesworth formerly served as superintendent of the New York State Police, Monroe County District



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Clockwise from top left: Illinois Gov. Pat Quinn during an Aug. 17 signing ceremony in which he approved legislation to bring greater transparency to that state's government; South Carolina Gov. Mark Sanford is shown responding to questions Aug. 13 about that state's attorney general asking ethics commissioners to review his travels Aug. 13; U.S. Sen. Chris Dodd, D-Conn., during a news conference Aug. 7 after being cleared by the Select Committee on Ethics of any wrongdoing in obtaining his Countrywide mortgage; former U.S. William Jefferson, right, leaves the Albert V. Bryan Courthouse Aug. 5 with his wife and daughters after being convicted on 11 of 16 counts involving corruption.

Attorney and as a special agent with the Federal Bureau of Investigation.

"We're also kind of a unique duo because Don's a Republican and I'm a Democrat," Welch said. "I like to think of it as a credential that makes sure that we're going to ask the tough questions and not avoid anything because it's a political hot potato."

Many public entities hire outside counsel to handle special litigation based on their legal expertise and outsider's perspective.

"We are independent and we will give Maggie unfiltered advice," Welch said. "We just ask the questions and we follow the trail where they lead us. Any questions we want answered, we get answered."

Welch and his partner were retained by the Water Authority a few years ago, after state auditors found it had paid six employees nearly \$500,000 in unearned

pay and benefits.

One of them was former executive director John Stanwix, who received more than \$290,000 for lifetime health insurance, medical benefits for himself and his wife and other unearned benefits, according to the state Comptroller's Office.

Stanwix also appeared to have a conflict of interest in an authority contract, in violation of state law. He ultimately had to pay restitution to the authority, Welch said.

It's "probably a good thing to hire an ethics counsel to review what's going on in your situation on a periodic basis," Welch said — before a public scandal hits.

Too late?

The City of New Orleans earlier this month hired two attorneys from Kelley Drye & Warren in New York City to advise on ethical issues and several federal investigations now targeting that city.

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Attorney David Laufman, another former assistant U.S. attorney, for the Eastern District of Virginia, will lead the effort.

New Orleans announced its retention of the firm on the heels of former U.S. Rep. William Jefferson's Aug. 5 conviction on 11 of 16 counts corruption. Federal investigators in that case discovered, among other ethical lapses, Jefferson had secreted \$90,000 in cash in a freezer at his Washington, D.C. home.

In late June, federal authorities confirmed a criminal investigation involving New Orleans' technology office, crime camera contracts and unspecified "related matters." New Orleans also has been sued over its handling of some public records' requests. City Attorney Penya Moses-Fields, in a statement last week said her office uses "legal consulting services on various matters as deemed appropriate," and to "supplement the legal demands" of the office, as needed. She noted the City Council also has, and has used, its discretion to hire outside counsel.

Closer to home, the federal investigation of ROBUTRAD and the county's involvement is ongoing. Monroe County terminated its contract with ROBUTRAD Corporation, effective Aug. 1.

Robert Morone, the county employee who supervised the company, is facing federal fraud charges and several workers are under investigation for receiving public tax dollars for private home improvement projects.

On Tuesday, Magistrate Judge Marian W. Payson adjourned Morone's case until Oct. 20.

Staying ahead of the curve

Good practices for any government

entity, business or other public-minded body include having an auditor review any and all books, records and accounting processes. But auditors typically do not investigate potential conflicts of interest and the systems in place to prevent them.

Gary Karl, a partner at Harter Secrest & Emery LLP who represents the Water Authority on other matters, said there is no "blanket rule" as to when an entity should hire a special ethics counsel.

"Whenever an independent counsel is selected, whether it's by a public body or a private organization, it's to get the perspective of a firm that is completely independent because they had no background or involvement with the situation to that point," Karl said.

He noted that the Water Authority has an independent ethics board that meets regularly, and an ethics and conflicts of interest policy, as most government bodies do.

"A municipality can and should seek legal advice whenever it is unsure about how it is acting," said Robert Bartlett Koegel, of counsel at Remington, Gifford, Williams & Colicchio LLP and former chairman of the New York State Bar Association's Municipal Law Committee.

Like a private corporation or individual, however, if a public entity has no reason to believe it is acting inappropriately, it might choose not to spend the public fisc investigating possible violations, Koegel said.

At Brooks's request, Chesworth and Welch established a whistleblower hotline for county employees earlier this summer. County spokesman Noah Lebowitz said the number and content of calls are being kept confidential to preserve the integrity of the hotline.

Welch acknowledged receiving a number of misplaced calls initially, due to public misunderstanding of the program.

One of the biggest challenges of serving as private counsel to a public entity is confidentiality, Welch said.

"I can't answer political questions, and I can't disclose my advice to the county entity," Welch said Wednesday.

Another set of eyes

On Tuesday, Democrats in the Monroe County Legislature proposed a citizen's advisory panel to examine and report county policies and procedures pertaining to misconduct and corruption.

"The ethics counsel is hired by the administration, it reports only to the administration, and the Legislature is not privvy ... except at the will of the county executive," Minority Leader Harry Bronson, D-Rochester and Henrietta, said. "The Legislature is empowered by county charter to investigate these types of matters."

The proposed panel would have seven members: three appointed by the Majority and Minority Leaders, respectively, and one selected by a majority vote of the six appointed members.

Creating such a panel would "remove as much politics as possible from the process," Bronson said. It also will afford people in managerial positions an opportunity to review what went wrong with ROBUTRAD, and recommend proper operations, oversight and fiscal controls for the future, he said.

The proposal will be considered during the Agenda Charter Committee meeting set for 5:30 p.m. Aug. 24. Public input is encouraged.

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