

Lawmakers, law firms try to beat back Moreland subpoenas

Wires Published 4:19 p.m. ET Nov. 22, 2013 | Updated 6:10 p.m. ET Nov. 22, 2013

ALBANY – A pair of politically connected law firms filed court papers Friday seeking to quash subpoenas from Gov. Andrew Cuomo's anti-corruption commission -- and attorneys for the state Legislature are also expected to file objections.

Both Hiscock & Barclay LLP and Harris Beach PLLC have asked the state Supreme Court to toss the demands from the Moreland Commission, which is seeking documents and communications related to lawmakers employed by the firms.

Harris Beach, based in Perinton, employs Sen. Michael Nozzolio, R-Fayette, Seneca County. Assemblyman William Barclay, R-Pulaski, Oswego County, is a partner at Hiscock & Barclay.

"It is ironic that a commission charged with purporting to examine ethics in government blatantly disregards the sacrosanct relationship of clients and their attorneys," said Karl Sleight, a member of Harris Beach and the former executive director of the defunct state Ethics Commission. "Allowed to continue unfettered, this far-a-field inquiry would adversely impact every individual and business in New York."

Both law firms filed their documents in state Supreme Court in Manhattan.

Also Friday, Assembly Speaker Sheldon Silver, D-Manhattan, and Senate Republican Leader Dean Skelos, R-Nassau County, sent separate emails to their members alerting them that their outside attorneys would file joint papers in an attempt to beat back the subpoenas.

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Cuomo created the commission in July after the Legislature failed to pass a series of anti-corruption measures he proposed. The commission has been seeking information about lawmakers' outside incomes. The panel is made up largely of sitting district attorneys and law-enforcement officials and is due to issue a preliminary report by Dec. 1.

In his email, Skelos said the Moreland panel's subpoenas "amount to an attempt to coerce or threaten the Legislature" into passing Cuomo's bills.

"Working together, we have accomplished a great deal for the people of this state," Skelos wrote. "However, we will not allow an Executive to ignore the Constitution or the important principle of separation of powers."

The subpoenas weren't issued to individual lawmakers, but rather their outside employers. New York state law considers lawmakers part-time employees, allowing them to receive compensation from private law firms and businesses.

In a statement Friday, the three co-chairs of the Moreland Commission -- Nassau County District Attorney Kathleen Rice, Onondaga County District Attorney William Fitzpatrick and private attorney Milton Williams -- said a number of lawmakers' employers complied with the subpoenas.

"We had hoped everyone would work together but they did not," the statement read. "We are confident we will prevail in court."

In his 2012 financial disclosure form, Nozzolio said he was a senior adviser and of counsel to Harris Beach, giving advice to its management committee members while assisting with recruiting and hiring.

Nozzolio was paid between \$100,000 and \$150,000 by the firm in 2012, according to the form.

Barclay reported income between \$50,000 and \$75,000 from Hiscock & Barclay in 2012.

The subpoenas from the commission -- revealed in the court filings Friday -- were issued on Oct. 15. The demands focused on Barclay and Nozzolio, asking for documents and communications regarding his compensation, clients and contracts with the firm.

Hiscock & Barclay argued the subpoena is unlawful on a number of grounds, specifically that it "lacks the requisite factual basis, materiality and relevance, demands privileged and confidential materials, and is overly broad, unduly burdensome and oppressive."

In a Nov. 6 letter to Harris Beach attorneys, attorneys for the panel laid out their legal authority for the subpoenas over four pages.

"The subpoena issued to Harris Beach seeks information that is clearly relevant and material to its proper inquiry into the 'conflicts of interest and ethics in state government' and the recommendation of possible reforms to such laws," Moreland attorneys Kelly Donovan and E. Danya Perry wrote, quoting from the executive order Cuomo issued creating the commission.

The letter continued: "New York law prohibits members of the Legislature from receiving compensation relative to their official duties involving legislation and other government proceedings."

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