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Davis Polk Debate: What Ethics Experts Are Saying About Their Appointment to Lead Impeachment Investigation

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Davis Polk & Wardwell was pushed into the spotlight this week after officials announced the law firm would lead the impeachment investigation into misconduct allegations against Gov. Andrew Cuomo.

But the news quickly drew criticism from an attorney representing Charlotte Bennett, a former Cuomo aide who has accused him of sexual harassment. The criticism touched on employment history of Dennis Glazer, who worked at the firm for more than three decades and is the husband of Chief Judge Janet DiFiore. He was also appointed by Cuomo to serve as chair of the SUNY Purchase College Council.

"This is an unacceptable conflict of interest," said Debra Katz, who is representing Bennett, in a statement while referencing Glazer's history with the firm. "The impeachment investigation must operate free of political influence and must be transparent, detailing for the public the steps being taken to protect the integrity of their impeachment investigation."

Those comments are in contrast with legal ethics experts who say the connection is attenuated and doesn't rise to a conflict of interest.

Meanwhile, there are no signs state lawmakers will be pulling Davis Polk & Wardwell from the high-stakes assignment, which involves which involves conducting the inquiry into accusations which threaten the embattled governor's hold on the office.

The law firm did not reply to questions from the Law Journal.

Glazer, who retired from the law firm at the end of 2012, declined to comment when reached by telephone on Friday.

Assembly Speaker Carl Heastie greenlit an impeachment investigation this month and says the law firm's team will work with the Assembly judiciary committee to lead the inquiry.

Questions still remain over how the law firm was officially selected for the inquiry.

The investigation comes as the third-term governor faces various sexual harassment allegations and swirling criticism over his administration's decision to hold back the number of nursing home residents who died from the coronavirus.

The impeachment investigation has faced criticism from Lindsey Boylan, a former Cuomo aide and the first woman to accuse the governor of sexual harassment.

The investigation "is not designed to be transparent or to move fast, and there's nothing [Cuomo] wants more than time," she wrote on Twitter.

She later panned the inquiry as a "sham."

The Sexual Harassment Working Group, which is composed of former state legislative employees who reported or experienced sexual harassment, issued a scathing statement on the investigation too.

The group said Davis Polk was selected "without a transparent process" and the firm "has a clear conflict of interest."

Bennett, the ex-Cuomo aide, is committed to working with government inquiries, but Davis Polk's involvement "gives her pause," Katz said in a statement.

"I suspect it will have the same effect on other women who were sexually harassed by the governor," the attorney said in a statement.

Given the governor's reputation for often using brute force in politics, Rebecca Roiphe, a professor at New York Law School and an expert on legal ethics, said one can sympathize with initial concerns about any connection to Cuomo's orbit. But, she said the law firm's selection doesn't rise to a conflict of interest and there are too many degrees of separation.

Any potential conflicts for Glazer, who left the firm years ago, would in no way automatically extend to every other lawyer at the firm, said Bruce Green, a law professor at Fordham University who writes about legal ethics.

Stephen Gillers, a law professor at New York University and an expert on legal ethics, added that the connections are too thin and the situation would not disqualify the law firm under the rules of professional conduct.

He noted there's been a significant amount of time since Glazer left the firm.

Yet, Kathryn Barcroft, an employment lawyer who focuses on sexual harassment cases, said even the appearance of a conflict could have practical problems for the impeachment investigation.

"The victims are going to be less willing to participate," she said.