

FREDERICKA MCGEE - GOVERNMENT TORT CLAIM ATTACHMENT

Statement of Facts

Fredericka McGee was uniquely poised to lead the State Bar with an impressive skill set and work experience when selected by the State Bar Board of Trustees on July 17, 2020. Her accolades and achievements are lengthy and extraordinary. As an accomplished public policy attorney, she is the only person to have served as legal counsel to five Speakers of the California State Assembly. She has spent a good deal of her nearly 30-year professional career advancing ground breaking public policy to improve daily life for all Californians, encouraging and advocating for diversity, inclusion and equity in the legal profession and so many aspects of community life in and out of California.

On behalf of the Assembly, Ms. McGee spearheaded legislation in conjunction with Kamala Harris to protect California homeowners from foreclosure following the great recession. She also worked with banks to develop legislation to require reporting when elder financial abuse was suspected. Ms. McGee also helped to secure the necessary Assembly votes to pass legislation that allowed undocumented individuals to obtain drivers licenses that improved public safety for all Californians.

Ms. McGee developed the judicial administrative data collection policy that helped to diversify the California Judicial branch. She worked with the judicial branch to gain legislative approval of the Long Beach Courthouse which was the first major civic building in the United States to be delivered as a performance-based infrastructure (PBI) public-private partnership (P3) project.

For more than a decade Ms. McGee oversaw and made efforts to protect the judicial budget on behalf of the Speaker's office when the budget saw significant cuts due to economic challenges of the state. As part of that budget work, Ms. McGee was required to resolve several controversial issues that required her to balance the demands of the Judicial Council, the 58 individual county courts, the impacted unions that represented court employees, court reporters, interpreters, the Governor's office as well as 120 legislators.

In addition to Ms. McGee's professional accomplishments, she has consistently volunteered in her community and in various bar associations, including the California Association of Black Lawyers, the Sacramento County Bar Association as well as serving as president of the Wiley Manuel Bar Association. In addition, Ms. McGee is an active alum of McGeorge School of Law not only assisting the administration with various efforts, but also mentoring law students across

the state. The breath of her commitment to mentoring was evident as dozens of younger accomplished attorneys spoke in support of Ms. McGee during the September 4, 2020, State Bar Board of Trustees meeting.

For her work and efforts, Ms. McGee has been honored by numerous organizations including being named a California Attorney of the Year, one of the Daily Journal's Top 100 Lawyers and the Capitol Weekly Top 100 Political Warriors.

The State Bar's Executive Director Search Committee included Debbie Manning, Ruben Duran, Jose Cisneros, and Josh Perttula. At the March 12, 2020, State Bar meeting, the State Bar Board of Trustees unanimously voted to delegate its authority to hire an executive search firm to both the Executive Director Search Committee Chairperson and Trustee Debbie Manning, and Trustee Ruben Duran. As a result, the California State Bar engaged the Hawkins Company to conduct a search for the new Executive Director of the California State Bar. The agents in charge of conducting the search for the Hawkins Company were: 1) Brett Byers; 2) Yonnine Hawkins-Garr; and Bill Hawkins. These three individuals became agents of the State Bar pursuant to Civil Code Sections 2295-2300, 2304-2326, 2330-2339, 2342-2345, 2349-2351.

On Friday, July 17, the full Board of Trustees for the Executive Director position interviewed Ms. McGee, along with two other finalist candidates. These were the second and final interviews. Following the interviews, the Board voted in closed session to appoint Ms. McGee as the Executive Director.

On Sunday morning, July 19, Ms. Hawkins-Garr and Mr. Byers, as agents of the State Bar, called Ms. McGee on behalf of the Board of Trustees. They informed Ms. McGee that the Board had voted to offer her the position as the new Executive Director of the State Bar. On that same date, Ms. McGee accepted the position. During the call, Mr. Byers also communicated to Ms. McGee the employee benefits that come with the job. That same day, Mr. Byers forwarded to Ms. McGee a written document entitled "Executive Director Salary and Benefits" which outlined the Executive Director compensation package that had been discussed during the phone call. (See attached Exhibit A.)

On July 19, later in the day, Debbie Manning, the Chair of the Search Committee contacted Ms. McGee and congratulated her for accepting the Executive Director position. Ms. Manning confirmed and celebrated Ms. McGee's selection stating that "the best candidate got the job. At times that happens for us too." This statement presumably alludes to the challenges of racism that

Ms. Manning had observed and was subjected to during her time serving as a Board Trustee. Ms. Manning and Ms. McGee are both African-American women and know firsthand the racism challenges Black women in the law face at every level and how they are sometimes able to succeed despite those challenges.

On July 22, Board of Trustees Vice Chairperson Ruben Duran, another member of the Executive Director Search Committee publicly announced at the State Bar Bench & Bar Committee that a candidate had been selected, they were finalizing everything and an announcement would be made soon.

On July 23, Ms. Hawkins-Garr, Ms. Byers and Ms. McGee agreed on a contract price of \$340,891 first year annual salary. On that same day, Steve Mazer, State Bar Chief Financial Officer, provided documents outlining State Bar executive personnel medical, dental, vision benefits and associated costs to both Debbie Manning and Brett Byers. The e-mail also included benefit details related to parking, temporary housing, life and accidental death & disability insurance, long term disability insurance, employee assistance program, commuter benefit (transit/parking subsidy) and health care and dependent care flexible spending accounts. Both Debbie Manning and Ms. Byers forwarded this information to Ms. McGee. This type of information is provided to "on board" an employee and not normally provided to a candidate.

On July 23, Ms. McGee also met with her real estate agent in order to list her house for sale. The next day, Ms. Manning called Ms. McGee to ask Ms. McGee to agree to a five-year term. Ms. McGee agreed to serve a five-year term. Ms. Manning advised Ms. McGee that Mr. Duran along with State Bar staff would contact the Department of Finance to approve Ms. McGee's relocation expenses which were estimated to exceed \$1,000 based on the suggested new State Bar executive staff relocation policy modeled after a provision in the California Code of Regulations.

Ms. Manning also indicated that State Bar staff would work with CalPERS to ensure that Ms. McGee's reinstatement was done properly for Ms. McGee to lock in her 100% retirement medical benefits from the California State Assembly. Ms. Manning also indicated that the current California State University system car allowance rate was acceptable for Ms. McGee's car allowance in her compensation package. During the same conversation, Ms. Manning became aware that Ms. McGee was giving away furniture as she was "staging her house" for sale so that she could perform the contract.

On July 25, Ms. Manning called to ask Ms. McGee if she could start on September 21, in order to be present for the September 24th and 25th State Bar Board of Trustees meeting. Ms. Manning indicated the Board would be having its transitional meetings on September 24 and 25 and it was imperative that, Fredericka McGee, as the new Executive Director, be on board by that time. Ms. McGee agreed to the start date of September 21, 2020. Ms. Manning indicated that she would be sharing the final contract terms with the Executive Committee Search Committee members via email that day.

On July 30, Ms. Byers phoned Ms. McGee and communicated that the Chair of the Board, Alan Steinbrecher, had additional questions for Ms. McGee related to Trial Court Unification and Ms. McGee's relationship with former Supreme Court Justice Ronald George. The specific questions were:

1. What was your involvement with trial court unification?
2. What is your relationship with Ron George?
3. Who is another person who could speak to Ms. McGee's work with Ron George?

Based upon the final July 25 employment agreement, from July 18th through August 10th, Ms. McGee took the following steps to be able to perform the contract:

1. Advised her subordinate staff person and select consultants that she would be leaving American Beverage Association;
2. Contacted a real estate agent in order to sell her Sacramento home;
3. Evicted her tenants in her Los Angeles area home in order to prepare the Los Angeles area home as her new domicile;
4. Contracted with a contractor to paint and repair her Sacramento home to prepare for sale;
5. Paid for a termite inspection to prepare her Sacramento home for sale;
6. Sold several furnishings to downsize in order to reduce relocation expenses;
7. Contacted CalPERS in order to coordinate her health and retirement benefits; and
8. Obtained estimates for movers to transport her belongings from Sacramento to Los Angeles.

Further, the State Bar began partial performance of the contract in the following manner:

1. Mr. Mazer provided "on-boarding" documents to Ms. Manning and Ms. Byers that were forwarded to Ms. McGee;
2. Ms. Hawkins-Garr and Ms. Byers, as agents of the State Bar, required that Ms. McGee obtain three or more relocation estimates for the move to the Los Angeles area; and
3. Ms. Manning shared the finalized contract with the Executive Director Search Committee for approval on July 25.
4. Mr. Duran announced to the Bench Bar Committee that an announcement of the new Executive Director would be made soon;

On August 7, Ms. McGee's former employer, former Speaker of the Assembly Fabian Nunez called Ms. McGee. Mr. Nunez reported that he had been contacted by the search committee a second time. A member of the Hawkins Firm spoke to Mr. Nunez on August 10 in a conversation that appeared to be all about Ron George. Mr. Nunez learned that Chairman Steinbrecher, some members of the Board, retired Chief Justice Ronald George and perhaps current Chief Justice Tani Cantil-Sakauye, were concerned that Ms. McGee was responsible or involved in the following:

1. Holding up funding for judicial positions due to the lack of diverse appointments by former Governor Schwarzenegger;
2. Mandating that the state collect certain data in the judicial appointment process;
3. Requiring the names of the Governor's local judicial vetting "kitchen cabinet" to be made public.

On August 12, during the opening public portion of the Executive Director Search Committee meeting and on a public line, Ms. Manning asserted "*since our last meeting issues have come up about Fredericka . . .*" Ms. Manning was interrupted by an unidentified female voice that indicated the meeting had been noticed as a closed session before the public line was disconnected.

On August 13, Ms. Byers and Mr. Hawkins phoned Ms. McGee and communicated that the Board was rescinding her offer of employment as Executive Director of the State Bar of California. They asked her to withdraw her application in exchange for not receiving a written

explanation of the Board's action. On August 14, Ms. McGee declined to withdraw her application as requested and again requested an explanation of the State Bar's breach of contract. The State Bar subsequently rejected all entreaties to honor its contract with Ms. McGee.

During the Board of Trustees meeting on September 4, approximately 30 people spoke in support of Ms. McGee's appointment as the State Bar Executive Director before Chair Steinbrecher cut off discussion. Letters supporting Ms. McGee's appointment were submitted by the California Legislative Black Caucus, Latino Legislative Caucus and Senate Minority Leader Shannon Grove. Ironically, the meeting was delayed for almost an hour due to someone writing "nigger" several times, "fuck black people", and "black lives don't matter" in the Zoom chat box. (See Exhibit B as reported and pictured in the Bakersfield Observer Newspaper.) Before the Zoom meeting was disrupted, State Bar staff indicated that more than 80 people were in the queue to speak at the meeting.

A week later, on September 11, Ms. Manning abruptly resigned. Her statements to witnesses at the time of her resignation confirmed her experience with systemic racism.

On September 24, Mr. Steinbrecher announced that the Executive Director search had been closed and that the new Board would conduct a new search. There is no record of any such Board action making this decision that was publicly noticed. Mr. Steinbrecher further announced that Donna Hershkowitz would continue as acting Executive Director. The State Bar's decision to maintain Ms. Hershkowitz in the position is inexplicable given her inferior qualifications and serious performance issues.

Under Ms. Hershkowitz's leadership, the State Bar has been publicly criticized for the July 2019 release of bar exam subjects, and has not taken meaningful action on a November 2019 study showing a pattern of bias toward African- American male attorneys within the State Bar's discipline system. Ms. Hershkowitz attempted to excuse the racial disparities in the discipline of Black male attorneys by asserting that it is because Black male attorneys tend to be solo practitioners. In frustration, Board Trustees Joshua Perttula and Arnie Sowell insisted on an expedited response to the systematic racism found in the State Bar discipline system and initiation of the recommendations that had been provided months earlier.

Statement of Claims and Damages

Ms. McGee brings these claims against the State Bar, State Bar Board of Trustee Chairman Alan Steinbrecher, the 2019-20 State Bar Board of Trustees, Donna Hershkowitz (Interim Executive Director), Steve Mazer (CFO), Vanessa Holton (General Counsel), the Hawkins Firm, Brett Byers; Yomine Hawkins-Garr and Bill Hawkins.

Breach of Contract

Ms. McGee contends that all the elements of a contract were established:

1. Offer: On July 19, Ms. Hawkins and Ms. Byers communicated the State Bar's offer of employment to Ms. McGee.
2. Acceptance: On July 19, Ms. McGee accepted the offer;
3. Agreement:
 - a. Ms. Byers, Ms. Hawkins Garr and Mr. Hawkins:
 - i. Negotiated salary with Ms. McGee;
 - ii. Identified all of the benefits; and
 - iii. Negotiated moving expenses;
 - b. Ms. Manning, as chair of the Executive Director Search Committee, confirmed the State Bar's offer of employment and confirmed the following terms:
 - i. Salary - \$340,891.00 per year with COLA increases for five years' service;
 - ii. Start date, September 21; and
 - iii. Termination date (five year contract)
 - iv. Exchanged written emails of these terms with Ms. McGee and the Executive Director Search Committee on July 24 and 25
 - c. Mr. Mazer provided additional agreement details by sending executive employee benefits package including dental, vision, and medical benefits and employee associated costs; relocation housing benefits; parking benefits; and car allowance on July 23.
4. Consideration: Salary of \$340,891.00 per year with COLA increase for five years' service.

Discrimination in Hiring Practices

The State Bar's process of pursuing additional information about Ms. McGee's "relationship" with former Chief Justice Ron George after the interview and hiring process was completed was improper and racially motivated. The unprecedented action clearly appears to have been triggered by a perception on the part of State Bar officials that Ms. McGee had advocated for diversity and equity in the judicial appointments process. Using Ms. McGee's opposition to discrimination as a factor in the hiring process is a clear violation of California's Fair Employment and Housing Act as well as related federal anti-discrimination laws.

2 California Code of Regulations Section 195.1(b) dictates that during an interview for a state civil service position, all interviews will be structured and use the same pre-determined job-related questions. As a candidate, during her interview, Ms. McGee answered a question from Mr. Steinbrecher asking if she knew former Chief Justice Ron George. Soliciting additional information about her ancient interactions with Chief Justice George after there was a binding contract was clearly a violation of State law.

Ms. McGee intends to depose Chief Justice Ron George (Ret.), Chief Justice Tani Cantil-Sakauye, and Chief Justice attorney Neil Gupta to determine what communications they may have had with State Bar staff or Board Trustees to interfere with Ms. McGee's contract.

Ms. Manning's resignation on September 11 substantiates Ms. McGee's race discrimination claim. Witness to Ms. Manning's statements at the time of her resignation will confirm that:

Ms. Manning believes that she was made a "figurehead" Chair of the Executive Director Search Committee while other Board members actively worked behind her back to undermine her; and

The sources of the disparaging accusations that were made to discredit Ms. McGee were not identified to Ms. Manning.

Privacy Violation under the CCPA

The California Consumer Privacy Act (CCPA) which was signed into law on October 11, 2019, provides applicants and employees with new rights to privacy. The public announcement of Ms. McGee's unique first name at the August 12 Executive Director Search Committee violated her right to privacy under the CCPA and damaged her character due to the uniqueness of Ms. McGee's name particularly in the California legal and political community.

The CCPA defines “Personal information” as “information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer.” Civil Code 1798.140 (o)(1). It may have been due to this negligent breach of Ms. McGee’s personal information during the public portion of the August 12 Executive Director Search Committee meeting that a story regarding this confidential employment matter appeared in the Recorder Newspaper on August 30 thereby causing Ms. McGee additional harm.

Further, effective January 1, 2020, the CCPA provides a right to statutory damages for data breaches. The public announcement of Ms. McGee’s unique first name which was capable of reasonably being associated with her provides for damages in the amount of \$100-\$750 for the breach of this sensitive data and statutory attorneys’ fees under Code of Civil Procedure Section 1021.5.

Violations of Bagley Keene Act

In violation of the Bagley Keene Act, the State Bar has failed to report out its July 17 closed session action where it voted to hire a candidate (e.g. Fredericka McGee) for the Executive Director position. To date, the State Bar has not reported those minutes nor posted the recording of the open session portion the July 17th meeting. This is not only a violation of the Bagley Keene Act, it is also inconsistent with its own custom and practice. Therefore, the minute book, any recordings and any other type of record of both closed and open sessions of the Board meeting should be made available immediately.

Further, in violation of the Bagley Keene Act, the State Bar has not provided minutes or a record of the public portion of either the Executive Director Search Committee meeting or the Board of Trustee’s meeting that followed the Search Committee meeting on August 12. State Bar’s General Counsel Vanessa Holton has indicated that the State Bar has no obligation to release any documentation of the Search Committee or Board action on August 12. Again, minutes, audio and/or video recordings of the Search Committee and Board meeting for both open and closed sessions have been requested and are being requested again.

It is unlikely that the second portion of the September 4 meeting which followed the racial slurs being posted in the meeting chat box, complied with the Bagley Keene Act as the “new” Zoom link that had to be provided was not available for the required 10 days. There were some attendees that were unable to rejoin the meeting as they did not see or hear the State Bar staff’s announcement about a new link being placed on the website. In further violation of the Bagley Keene Act, no record of the September 4 meeting interruption was reflected in the open session

minutes that were approved on September 24. Therefore, the minutes do not accurately reflect what transpired at that meeting.

Additionally, contrary to the State Bar's practice in its minutes for all other public comments, there is no summary of any of the 30 individual statements in support of Ms. McGee's appointment. The State Bar has failed to post on its website the video recording of this meeting more than a month after it occurred, which is also inconsistent with its regular practice. As such, the minute book, any video and/or audio recordings of both the closed and open session of this meeting are being requested.

Agency Liability

Business and Professions Code Section 6008.6 requires Board approval of any contract in excess of \$50,000, but also allows approval of a particular contract by the Executive Director in consultation and approval of a designated committee of the Board when full Board approval is not feasible because contract approval is necessary prior to the next regularly scheduled meeting of the board. Ms. Manning chaired the State Bar Executive Director Search Committee which was the relevant committee to approve Ms. McGee's contract.

Ms. Manning required that Ms. McGee start work on September 21, anticipating Ms. Hershkowitz's desire to relinquish her duties as Interim Executive Director in advance of the Board's September 24 board meeting. Ms. Manning and the Search Committee were statutorily authorized to approve Ms. McGee's contract to ensure continuity of operations. The Search Committee would then provide the full Board notice of such approval at its next regularly scheduled meeting.

This action and process is consistent with the action taken by the State Bar in December 2019 and January 2020 to approve the Interim Executive Director contract for Ms. Hershkowitz. On December 20, 2019, Mr. Steinbrecher, acting as chair of the Board, approved Ms. Hershkowitz's appointment in advance of Leah Wilson's departure on January 17, 2020, as it was before the Board's regularly scheduled meeting on January 24, 2020.

All of the acts described herein are attributable to the agents and employees under the direction and control and with the permission, consent and authorization of the State Bar, its Board of Trustees, the interim Executive Director, the board chair and their agents and employees. Said acts, conduct, and failures to act were within the scope of such agency and/or employment, and each agent and employee ratified the acts and omissions of each of the other agents and

employees. Each of these acts and failures to act is alleged against each agent and employee whether acting individually, jointly or severally. At all times relevant herein, each agent and employee was acting within the course and scope of his or her employment.

Damages

As a result of the breach of contract, violation of her consumer privacy rights and unlawful race discrimination, Ms. McGee will suffer a substantial loss of earnings and employment benefits in an amount in excess of \$2,000,000.00 based on the loss to her CalPERS retirement pay which was provided to Ms Holton to which she replied, “darn.” (See Exhibit C). This CalPERS estimate is based on only the first year of work under the contract at \$340,891. Ms. McGee’s retirement monthly compensation would have gone from approximately \$8,500 per month to more than \$16,500 per month. The full damages would be based on the loss to CalPERS retirement benefits after five years and final compensation as provided in the agreed upon five year contract term which would have included merit and COLA increases.

In addition, Ms. McGee has suffered and will continue to suffer damages to her career and reputation. She was humiliated, hurt and injured in her health, strength and activity, and suffered and continues to suffer loss of reputation, goodwill and standing in the community, scorn and humiliation, embarrassment, hurt feelings, mental anguish and suffering, depression, anxiety, loss of enjoyment of life, and a general loss of self-esteem and well-being, incidental damages and out-of-pocket expenses.

Ms. McGee will seek compensation for her injuries pursuant to (but not limited to) the following statutes or claims:

1. Federal Law Claims:
 - 42 U.S.C. Section 1983 - individual liability for race discrimination
 - 42 U.S.C. Section 2000e - race discrimination
 - 42 U.S.C. Section 1981- race discrimination

2. State Claims:
 - Breach of Contract
 - Breach of Implied Covenant of Good Faith and Fair Dealing
 - Invasion of Privacy
 - False Light Defamation of Character

Government Code Section 11120 et seq.
Government Code Section 12940 et seq.
Code of Civil Procedure Section 17200 et seq.
Civil Code Section 51 et seq.
Civil Code Section 1798.100-1798.199 et seq.
Civil Code Section 2300 et seq.
Code of Civil Procedure Section 1021.5
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress

Ms. McGee will seek special damages for her injuries in an amount to be determined in excess of \$2,000,000.00, punitive damages against the individual defendants, prejudgment interest at the prevailing rate, the costs of suit, including reasonable attorneys' fees and such other and further relief, as well as injunctive relief to address the discriminatory and unfair business practices of the State Bar of California.

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