



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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MEMORANDUM

TO: Chair Ravel, Commissioners Casher, Eskovitz, Wasserman and Wynne

FROM: Gary S. Winuk, Chief of Enforcement
Milad Dalju, Commission Counsel, Enforcement Division

RE: Assignment of a Hearing to an Administrative Law Judge

DATE: August 1, 2013

CASE: In the Matter of James McGhee (FPPC Case No. 12/321)

I. Introduction

Respondent James McGhee (“Respondent”) was a member of the California Board of Psychology (“Psychology Board”), an agency within the Department of Consumer Affairs, until June 1, 2011. As a member of the Psychology Board, Respondent was a “designated employee” as defined in Section 82019, subdivision (a), of the Political Reform Act (the “Act”) and in the conflict of interest code of the Department of Consumer Affairs. As a designated employee of the Psychology Board, Respondent was required, by Section 87300 and the Psychology Board’s conflict of interest code, to file a leaving office statement of economic interests (“SEI”) within 30 days after leaving office. In this matter, Respondent failed to file a leaving office statement of economic interests with the Department of Consumer Affairs by July 1, 2011.

II. Procedural History

On March 4, 2013, General Counsel Zachary P. Morazzini issued a Finding of Probable Cause and Order to Prepare and Serve an Accusation (the “Finding”). On March 6, 2013, Respondent was served with the Finding, and Chief of Enforcement Gary S. Winuk issued an Accusation against Respondent (the “Accusation”, attached as Exhibit A). On March 30, 2013, Respondent was personally served with the Accusation and related papers. On April 16, 2013, the Enforcement Division received Respondent’s request for a hearing.

III. Procedural Issue

Every hearing in a contested case must be presided over by an administrative law judge (ALJ). (Section 11512, subd. (a).) The agency itself shall determine whether the ALJ is to hear the case alone or whether the agency itself is to hear the case with the ALJ. (*Id.*)

When the agency itself hears the case, the ALJ shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law. (Section 11512, subd. (b).) The agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the ALJ. When the ALJ alone hears a case, he or she shall exercise all powers relating to the conduct of the hearing. (*Id.*) A ruling of the ALJ admitting or excluding evidence is subject to review in the same manner and to the same extent as the ALJ's proposed decision in the proceeding. (*Id.*)

IV. Summary of the Accusation

The Accusation includes one count, as follows:

Count 1: As a member of the California Board of Psychology who left that position on June 1, 2011, Respondent James McGhee had a duty to file a Leaving Office Statement of Economic Interests with the Department of Consumer Affairs by July 1, 2011. Respondent James McGhee failed to file a Leaving Office Statement of Economic Interests with the Department of Consumer Affairs by July 1, 2011, in violation of Government Code section 87300.

The Accusation asks for a monetary penalty, pursuant to Section 83116, subdivision (c), of up to \$5,000.

V. Conclusion

If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an ALJ is available. (Regulation 18361.5, subd. (b).) Otherwise, a hearing of this matter will be conducted before an ALJ alone pursuant to Section 11512, subdivision (a).

Exhibit A

1 GARY S. WINUK
Chief of Enforcement
2 MILAD DALJU
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
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Sacramento, CA 95814
4 Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

7 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

8 **STATE OF CALIFORNIA**

9 In the Matter of

10)
11) FPPC No. 12/321
12)
13) ACCUSATION
14) (Gov. Code §11503)
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JAMES MCGHEE,
Respondent.

Complainant Fair Political Practices Commission, after a finding of probable cause made pursuant to Government Code section 83115.5, hereby alleges the following:

JURISDICTION

1. Complainant is the Fair Political Practices Commission (the "Commission") and makes this Accusation in his official capacity and in the public interest.

2. The authority to bring this action is derived from Title 2, California Code of Regulations, Sections 18361 and 18361.4, subdivision (e), and the statutory law of the State of California, specifically including, but not limited to, Government Code sections 83111, 83116, and 91000.5, which assign to the Commission the duty to administer, implement, and enforce the provisions of the Political Reform Act, found at Government Code sections 81000 through 91014.

1 3. When enacting the Political Reform Act (the "Act"),¹ California voters specifically found
2 and declared, as stated in Sections 81001, subdivision (h), and 81002, subdivision (f), that previous laws
3 regulating political practices had suffered from inadequate enforcement, and it was their purpose to
4 ensure that the Act be vigorously enforced.

5 4. To that end, Section 81003 requires that the Act be liberally construed to achieve its
6 purposes.

7 5. One of the stated purposes of the Act, as set forth in Section 81002, subdivision (c), is to
8 ensure that the assets and income of public officials, that may be materially affected by their official
9 actions, be disclosed, so that conflicts of interest may be avoided.

10 6. In furtherance of this purpose, Sections 87300 and 87302 require every state agency and
11 local government to adopt and promulgate a conflict of interest code that requires employees whose
12 positions are designated in the conflict of interest code to file periodic statements of economic interests.

13 **RESPONDENT**

14 7. Respondent James McGhee ("Respondent") was a member of the California Board of
15 Psychology ("Psychology Board") at the Department of Consumer Affairs, a state agency, from 2003
16 until June 1, 2011.

17 8. The action of Respondent – failing to file a Leaving Office Statement of Economic
18 Interests ("SEI"), as hereinafter stated – is in violation of the law and public policies of the State of
19 California.

20 **APPLICABLE LAW**

21 9. All applicable law referenced herein is the law as it existed during the relevant time for
22 the violations alleged in this Accusation, namely June 1, 2011, through July 1, 2011.

25 ¹The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are
26 to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are
27 contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to
28 Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

1 **A. Definitions**

2 10. Pursuant to Section 82019, a “designated employee” includes any member of any agency
3 whose position is “designated in a Conflict of Interest Code because the position entails the making or
4 participation in the making of decisions which may foreseeably have a material effect on any financial
5 interest.”

6 **B. Duty to File Statements of Economic Interests**

7 11. Section 87302, subdivision (b), requires that every agency’s conflict of interest code
8 require each designated employee of the agency file a Leaving Office SEI within 30 days of leaving
9 office, disclosing reportable investments, business positions, interests in real property, and income held
10 or received at any time during the period between the closing date of the last statement required to be
11 filed and the date of leaving office.

12 12. The Department of Consumer Affairs’ conflict of interest code requires all designated
13 employees, including members of the Psychology Board, to file a Leaving Office SEI with the
14 Department of Consumer Affairs within 30 days of leaving office, as required by Section 87302,
15 subdivision (b).

16 13. The requirements of an agency’s conflict of interest code have the force of law, and any
17 violation of those requirements is deemed a violation of the Act. (Section 87300.)

18 **C. Factors to be Considered by the Commission**

19 14. In framing a proposed order following a finding of a violation pursuant to Section 83116,
20 the Commission and the administrative law judge shall consider all the surrounding circumstances
21 including but not limited to: (1) The seriousness of the violation; (2) The presence or absence of any
22 intention to conceal, deceive or mislead; (3) Whether the violation was deliberate, negligent or
23 inadvertent; (4) Whether the violator demonstrated good faith by consulting the Commission staff or
24 any other government agency in a manner not constituting a complete defense under Section 83114(b);
25 (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of
26 violations of the Act or similar laws; and (6) Whether the violator, upon learning of a reporting
27

1 violation, voluntarily filed amendments to provide full disclosure. (Regulation 18361.5,
2 subd. (d).)

3 **GENERAL FACTS**

4 15. Complainant incorporates paragraphs 1 – 14 of this Accusation, as though completely set
5 forth herein.

6 16. As a designated employee of the Department of Consumer Affairs, Respondent was
7 required to file a Leaving Office SEI with the Department of Consumer Affairs within 30 days of
8 leaving office.

9 17. Respondent failed to file a Leaving Office SEI with the Department of Consumer Affairs
10 by July 1, 2011.

11 18. On or about November 10, 2011, the Commission's Technical Assistance Division
12 ("TAD") sent Respondent a letter advising him that his Leaving Office SEI was past due and requested
13 that he file the statement within 30 days.

14 19. On or about December 29, 2011, after receiving no reply from Respondent, TAD sent a
15 second letter to Respondent advising him that his Leaving Office SEI remained past due and requested
16 that he file the statement. The letter further advised Respondent that if the delinquent statement was not
17 received within 30 days the matter would be referred to the Commission's Enforcement Division (the
18 "Enforcement Division").

19 20. On or about May 9, 2012, after receiving no reply from Respondent, TAD referred the
20 matter to the Enforcement Division.

21 21. To date, Respondent has not filed a Leaving Office SEI with the Department of
22 Consumer Affairs or the Commission.

23 **COUNT 1**

24 **Failure to File a Leaving Office Statement of Economic Interests**

25 22. Complainant incorporates paragraphs 1 – 21 of this Accusation, as though completely set
26 forth herein.

1 23. As a member of the California Board of Psychology who left that position on June 1,
2 2011, Respondent James McGhee had a duty to file a Leaving Office Statement of Economic Interests
3 with the Department of Consumer Affairs by July 1, 2011.

4 24. Respondent James McGhee failed to file a Leaving Office Statement of Economic
5 Interests with the Department of Consumer Affairs by July 1, 2011, in violation of Government Code
6 section 87300.

7 **MITIGATING OR EXCULPATORY FACTORS**

8 25. Complainant incorporates paragraphs 1 – 24 of this Accusation, as though completely set
9 forth herein.

10 26. No evidence has been obtained indicating any mitigating or exculpatory factors.
11

12 **AGGRAVATING FACTORS AND OTHER RELEVANT MATERIALS**

13 27. Complainant incorporates paragraphs 1 – 26 of this Accusation, as though completely set
14 forth herein.

15 28. Failure to file a SEI is a serious violation of the Act because it deprives the public of
16 important information about a public official's economic interests which could lead to potential conflicts
17 of interest regarding decisions he or she may make in his or her official capacity.

18 29. On February 11, 2010, Respondent was fined \$2,000 in a default decision by the
19 Commission for failing to file a 2007 Annual SEI.

20 30. To date, Respondent has not, despite several requests by the Commission, filed the
21 delinquent statement.

22 **PRAYER**

23 WHEREFORE, Complainant prays as follows:

24 1. That the Commission hold a hearing pursuant to Section 83116 and Regulation 18361.5,
25 and at such hearing find that Respondent James McGhee violated the Act as alleged herein;
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27
28

1 2. That the Commission, pursuant to Section 83116, subdivision (c), order Respondent
2 James McGhee to pay a monetary penalty of at least \$2000 and not more than \$5,000 for the violation of
3 the Act alleged herein in **Count 1**;

4 3. That the Commission, pursuant to Regulation 18361.5, subdivision (d), consider the
5 following factors in framing a proposed order following a finding of a violation pursuant to Section
6 83116: (1) the seriousness of the violation; (2) the presence or absence of any intention to conceal,
7 deceive or mislead; (3) whether the violation was deliberate, negligent or inadvertent; (4) whether the
8 violator demonstrated good faith by consulting the Commission staff or any other government agency in
9 a manner not constituting a complete defense under Section 83114(b); (5) whether the violation was
10 isolated or part of a pattern and whether the violator has a prior record of violations of the Act or similar
11 laws; and (6) whether the violator, upon learning of a reporting violation, voluntarily filed amendments
12 to provide full disclosure.

13 4. That the Commission grant such other and further relief as it deems just and proper.
14

15
16 Dated: 3/6/13



Gary S. Winuk
Chief of Enforcement
Fair Political Practices Commission

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