



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 50-3 JANUARY 2020**

**DATE:** January 24, 2020

**TO:** Members, Board of Trustees

**FROM:** Vanessa L. Holton, General Counsel

**SUBJECT:** Notification of Approval of Interim Executive Director Contract - Request for Board Ratification

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### **EXECUTIVE SUMMARY**

This item notifies the Board of the execution of a contract with Donna Hershkowitz for the position of Interim Executive Director, as negotiated by Chair Alan Steinbrecher and signed by the Chair on the Board's behalf, and seeks the Board's ratification of the Chair's execution of the contract.

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### **BACKGROUND**

Donna Hershkowitz has been selected to serve as the State Bar's Interim Executive Director following the resignation of former Executive Director Leah Wilson.

The Chair of the Board of Trustees, Alan Steinbrecher, negotiated a contract for Ms. Hershkowitz containing terms substantially similar to Ms. Wilson's former contract.

Business and Professions Code section 6008.6 requires board approval for contracts in excess of \$50,000, but provides that in the event that approval for a particular contract by the board is not feasible because approval of the contract is necessary prior to the next regularly scheduled meeting of the Board of Trustees, the chief executive officer [executive director] of the State Bar may approve the contract after consultation with and approval by a designated committee of the board and subject to notification of the full board at the board's next regularly scheduled meeting.

This contract was required to be approved before the next regularly scheduled board meeting because Ms. Wilson resigned from the State Bar effective January 17 and it was necessary for the State Bar to have an Interim Executive Director in place to ensure continuity of operations. Because this contract pertains to the position of executive director—who is hired by and reports to the Board—the Chair of the Board of Trustees (rather than the outgoing executive director) executed the contract on behalf of the State Bar.

## **DISCUSSION**

The Interim Executive Director contract (attached to this item) provides that Ms. Hershkowitz will receive an annual salary of \$267,500, a maximum age allowable deferred compensation (457(b)) contribution paid by the State Bar, and will receive health and retirement benefits in accordance with the Rules and Regulations Pertaining to Executive Staff Employees. These terms are identical to former Executive Director Leah Wilson’s contract. Ms. Hershkowitz’s contract differs from Ms. Wilson’s contract in two material respects: (1) the contract is for an indefinite term and continues until terminated by either party (whereas Ms. Wilson’s contract was for a 3-year term); and (2) Ms. Hershkowitz will be reimbursed for official travel in accordance with the State Bar’s Travel Expense and Business Expense policies (whereas Ms. Wilson had received a \$625 monthly vehicle allowance in lieu of mileage and parking reimbursement).

## **FISCAL/PERSONNEL IMPACT**

Approval of this contract will result in expenditure of payroll and benefits as described above.

## **AMENDMENTS TO RULES OF THE STATE BAR**

None

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: None - core business operations

## **RECOMMENDATIONS**

**RESOLVED**, that the Board of Trustees ratify the attached contract with Donna Hershkowitz for the position of Interim Executive Director, as executed by the Chair of the Board of Trustees on behalf of the State Bar on December 20, 2019.

## **ATTACHMENT(S) LIST**

- A.** The State Bar of California Interim Executive Director Employment Agreement for Donna Hershkowitz

**THE STATE BAR OF CALIFORNIA  
INTERIM EXECUTIVE DIRECTOR  
EMPLOYMENT AGREEMENT**

**THIS AGREEMENT** is made as of the last date it is executed below by and between **THE STATE BAR OF CALIFORNIA**, a public corporation with its principal place of business at 180 Howard Street, San Francisco, California 94105-1639 (“the State Bar”), by and through its Board of Trustees (“Board”), and **DONNA HERSHKOWITZ** (“Interim Executive Director”).

**SECTION I - TERM**

This Agreement is effective at the close of business on January 17, 2020, and continues until terminated by either party.

**SECTION II - HOURS OF WORK**

It is understood that the demands of the position require more than eight hours a day and/or forty hours of work per week. Thus, hours of employment are those necessary to reasonably and competently discharge Interim Executive Director’s duties. Interim Executive Director is not entitled to receive overtime compensation.

**SECTION III - DUTIES**

- A. Interim Executive Director is hired to serve on an interim basis between the departure of Leah Wilson as Executive Director and the hire of Ms. Wilson’s permanent successor. During her service as Interim Executive Director, she will continue to serve in the position and fulfill the duties of the Chief of Programs for the State Bar.
- B. Interim Executive Director is employed by the Board of the State Bar as its Interim Chief Executive Officer under the title “Interim Executive Director.” She will devote her attention and energies to the performance of the duties of that position to the satisfaction of the Board, as those duties are described in the Board Policy Manual.
- C. Interim Executive Director will administer the facilities of the State Bar subject to the direction of the Board. She will supervise and coordinate the work of the components of the State Bar in developing and administering State Bar programs so that its mission, goals and mandates, as declared in the State Bar Act and State Bar Rules and by the Board, are implemented and executed.

- D. Interim Executive Director will not, while serving in that position, engage in any other business or professional activity for pecuniary gain without first complying with the outside employment procedures described in Section 22 of the “Rules and Regulations Pertaining to the Employment of Executive Staff Employees” (“Executive Staff Rules”), as they may be amended, and receiving the approval of the Board.
- E. The essential duties of Interim Executive Director are:
- 1) To ensure that the State Bar achieves its missions;
  - 2) To ensure that the protection of the public as the highest priority of the State Bar is reflected in State Bar operations, policy, and procedure;
  - 3) To ensure that the State Bar’s administrative structures and processes support mission realization and high quality operations, that there is adequate and competent staff support, and that appropriate direction is provided to staff and consultants employed by the State Bar;
  - 4) To establish and oversee program and staff evaluation and accountability so as to ensure the delivery of quality services to the public and other State Bar stakeholders;
  - 5) To develop and maintain key external relationships, including with the Supreme Court, the Legislature, the Governor’s Office, the media, and the general public;
  - 6) To competently manage the State Bar’s budget as approved by the Board;
  - 7) To appropriately safeguard and administer all funds, physical assets, and other State Bar property;
  - 8) To work with the Board Chair to implement strategies for Board development and to provide support to the Board in developing its oversight and policy making competencies;
  - 9) To keep the Board fully informed on all matters of significance;
  - 10) To ensure that the State Bar conducts and effectuates strategic planning and implementation processes;
  - 11) To engage in continuous professional development and to identify and take advantage of training and support opportunities; and,
  - 12) To travel as required by the Board and to properly discharge the duties and

responsibilities of the position.

#### **SECTION IV - PLACE OF EMPLOYMENT**

Interim Executive Director's primary place of employment is the State Bar's offices in Los Angeles. She will be present as required at the State Bar's San Francisco office, as well as at other locations where the State Bar's business is conducted. She is expected to travel as required by the business of the State Bar.

#### **SECTION V - APPLICABLE STANDARDS**

- A. Interim Executive Director has the experience, expertise, and ability to perform the duties of the position as set forth herein.
- B. Interim Executive Director will perform the duties of the position in a timely manner and with due diligence according to the highest and most professional standards.

#### **SECTION VI - EVALUATION**

Should Interim Executive Director's employment continue for a year or more, she will be evaluated annually by the Board Executive Committee, utilizing the process and time frame outlined in Section 7.1 of the Executive Staff Rules. Approximately one month prior to the annual evaluation, Interim Executive Director will provide to the Board her confidential self-evaluation regarding the evaluation year's annual goals and performance standards.

#### **SECTION VII - COMPENSATION AND PAYMENT**

- A. Interim Executive Director's annual salary is \$267,500, less all appropriate deductions and withholdings, and paid in accordance with the payroll schedule applicable to Executive Staff employees.
- B. Interim Executive Director will receive an annual increase in salary where: 1) she has received a satisfactory evaluation; 2) a labor market analysis and the economic circumstances of the State Bar support such an increase; and 3) the appropriate Board Committee authorizes such an increase. Adjustments to salary under this Section shall not constitute the creation of a new contract or extend the termination date of this Agreement.

### **SECTION VIII - EMPLOYMENT BENEFITS AND LEAVES**

Interim Executive Director is entitled to the employment benefits set forth in the Executive Staff Rules, except as otherwise provided herein:

- 1) The State Bar will pay Interim Executive Director the maximum annual deferred compensation benefit permissible by law and by State Bar sponsored 457 Deferred Compensation plan. This benefit will be provided on a pro-rata monthly basis and administered subject to the law, and the rules and limitations of the State Bar-sponsored 457 Deferred Compensation Plan.
- 2) Interim Executive Director will receive 2.083 vacation days per month, subject to the accrual cap set forth in the Executive Staff Rules. She will work with the Board to ensure that vacation is taken in a manner that does not disrupt operations and will, whenever possible, arrange to be available by phone and e-mail to address significant issues. If Interim Executive Director terminates or is terminated from the State Bar, she will be compensated for all accrued vacation up to the applicable accrual cap. If she returns to State Bar service directly upon leaving Interim Executive Director position, accrued vacation leave earned during her service as Interim Executive Director will remain in her vacation leave balance.
- 3) This agreement expressly does not provide severance benefits for termination from the position of Interim Executive Director.

### **SECTION IX - TRAVEL AND BUSINESS EXPENSES**

Interim Executive Director is entitled to reimbursement for transportation, business and travel expenses incurred in the performance of her duties and in accordance with the State Bar's Travel Expense and Business Expense policies, as they may be amended. Interim Executive Director will be provided with a business credit card for her use consistent with the attached policies.

### **SECTION X - WORK PRODUCT**

- A. All work product that Interim Executive Director creates or prepares as Interim Executive Director ("Work Product") is and shall be the sole property of the State Bar. Without limitation, Interim Executive Director assigns to the State Bar, exclusively and perpetually, all rights, title, and interests to any such Work Product including, without limitation, any copyrights or rights of reproduction in any form or media, and the right to secure registrations, renewals, reissues, and extensions thereof. No rights of any kind are reserved to or by Interim Executive Director or shall revert to Interim Executive Director.

- B. Interim Executive Director shall execute any documents and do any further acts that may be necessary to perfect, register, or enforce State Bar's ownership of the foregoing rights, in whole or in part.

#### **SECTION XI - CONFIDENTIALITY**

Interim Executive Director shall keep in the strictest confidence and shall not use or disclose to any third parties, or apply to her own personal benefit, any confidential information, data, or materials ("Confidential Information") of the State Bar. Confidential Information includes State Bar trade secrets, personnel records or information, financial records or information, membership lists or other member-related information, or attorney disciplinary records or information. When designated as "confidential," Confidential Information also includes financial records or information, and the contents of any reports, studies, or surveys prepared by or for the State Bar.

#### **SECTION XII - ASSIGNMENT**

This Agreement is personal to Interim Executive Director and may not be assigned in part or in whole by her to any other individual or entity.

#### **SECTION XIII - COMPLIANCE WITH LAWS**

Interim Executive Director will comply with all federal, state and local laws, ordinances, rules and regulations applicable to or associated with the performance of the Interim Executive Director's duties.

#### **SECTION XIV - TERMINATION**

- A. Interim Executive Director serves at the pleasure and discretion of the Board.
- B. State Bar or Interim Executive Director may terminate this Agreement, with or without cause, upon 30 days prior written notice. Upon such termination of this Agreement, Interim Executive Director is entitled to return to her former position as State Bar Chief of Programs subject to the applicable salary, benefits and terms and conditions of employment.

This Agreement will also terminate upon the death of Interim Executive Director, the insolvency or bankruptcy of the State Bar, or any disability of Interim Executive Director that

prevents her from performing the essential duties of her position, as set forth in Section III.

**SECTION XV - CONFLICTS OF INTEREST**

Interim Executive Director acknowledges that the State Bar is a public corporation and, as a result, its Interim Executive Director is subject to the Conflict of Interest provisions of Government Code §87100, et seq., the Fair Political Practices Commission Regulations set forth at 2 Cal. Code of Regs. § 18109, et seq. and the Conflict of Interest Code for Designated Employees of the State Bar of California as amended from time to time. The current Conflict of Interest Code is attached as Attachment IV. Interim Executive Director shall become acquainted with the Conflict of Interest Code provisions, comply fully with them, and not take any action that could appear to violate them.

**SECTION XVI - NOTICE**

Any notices to be given by either party to the other shall be made in writing, by either personal delivery or by mail, registered or certified, postage prepaid with return receipt requested. Notices delivered personally shall be deemed received as of actual receipt date; mailed notices shall be deemed received as of five (5) days after the date postmarked. Mailed notices shall be addressed to the respective parties as follows:

Office of General Counsel State Bar of California 180 Howard Street San Francisco, CA 94105 ATTN: General Counsel	Interim Executive Director State Bar of California Office of the Executive Director 845 South Figueroa Street Los Angeles, CA 90017
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Each party may change its notice address by giving written notice in accordance with this Section.

**SECTION XVII - MEDIATION/ARBITRATION**

- A. Mediation: If any dispute arises out of or relates to this Agreement, or the breach thereof and if the dispute cannot be settled through informal negotiation, the parties agree to promptly work in good faith to resolve the dispute by mediation administered by a mutually agreed upon alternative dispute resolution organization or mediator, to be chosen within thirty days of notice of the dispute. The parties understand and agree that the provisions of California Evidence Code sections 1115 et seq. apply to any mediation

conducted under this Agreement.

- B. Arbitration: Any controversy or claim arising out of or related to this Agreement or the breach thereof for which mediation has been unsuccessful, except for those controversies or claims valued at five thousand dollars (\$5,000) or less, will be submitted to binding arbitration. The arbitration will take place before one arbitrator in the City and County of Los Angeles, and shall be conducted in accordance with California Code of Civil Procedure sections 1280 through 1294.2, inclusive. The parties expressly agree that the provisions of California Code of Civil Procedure section 1283.05 are applicable to the arbitration agreement. The cost of arbitration will be borne equally by the parties. Disputes of five thousand dollars (\$5,000) or less will be handled in Small Claims court in the City and County of Los Angeles, California.

#### **SECTION XVIII - TAX AND RETIREMENT CONSEQUENCES**

The Board makes no representation and provides no warranty regarding the effect of this Agreement on Interim Executive Director's status with any retirement plan or program or liabilities there under and/or the tax consequences to Interim Executive Director arising out of or related to this Agreement, including the salary, benefits, and allowances provided for herein. Interim Executive Director understands that she holds sole responsibility for all such retirement and tax issues.

#### **SECTION XIX - GENERAL PROVISIONS**

- A. This Agreement supersedes any and all other agreements, either oral or written, which may exist between the parties, and contains all of the covenants and agreements between the parties as of the effective date of this Agreement. By signing below, each party acknowledges that no representations, inducements, promises or agreements which are not embodied herein have been made by either party, and that no agreement, statement or promise not contained herein shall be binding on the parties.
- B. No term or provision herein shall be deemed waived unless such waiver is made in writing and is signed by the party claimed to have waived. Any waiver of a breach by any party to the other, whether express or implied, shall not constitute a waiver of any other, different or subsequent breach.
- C. This Agreement is deemed to have been made and entered into by the parties at Los Angeles, California and shall be construed according to the laws of the State of California.

- D. The titles used herein are not a substantive part of this Agreement and are included solely for convenience and have no bearing upon and do not in any way limit the application of the terms and conditions of this Agreement.
- E. No amendment, alteration, or variation of the terms of this Agreement shall be valid unless made in writing and signed by both of the parties hereto.
- F. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.
- G. Each person signing this Agreement acknowledges that he or she has had the opportunity to consult with counsel regarding its terms and fully understands the duties and obligations being undertaken.
- H. Each person signing this Agreement on behalf of the parties named above hereby represents, warrants, and covenants that he or she is properly authorized and empowered by the contracting parties to enter into this Agreement, and that he or she has read, understands and agrees that the parties shall be bound by this Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last date written below.

STATE BAR OF CALIFORNIA

By: 

Name: Alan K. Stembrecher

Title: Chair, Board of Trustees

Date: December 20, 2019

DONNA S. HERSHKOWITZ

By: 

Name: Donna S. Hershkowitz

Title: Interim Executive Director

Date: December , 2019