

EXHIBIT L

From: McGuire, James R.
Sent: Monday, January 25, 2010 4:58 PM
To: 'Bressler, Steven'
Cc: Dresser, Gregory P.; Park, Grace Y.
Subject: RE: Golinski v. OPM

Steve:

My apologies for any miscommunication and I'm sorry that I missed your phone call of this afternoon.

I would like to speak tomorrow morning, Pacific time, regarding OPM's position on the substance of the motion for a preliminary injunction. To ensure that our position is clear to you in advance of that call, so that our conversation can be meaningful, here it is: OPM gratuitously interfered with an ongoing EDR matter pending before the Chief Judge of the Ninth Circuit. As a consequence of that action, the Chief Judge ordered OPM to cease such interference. OPM failed to do so and also failed to appeal the order to the Judicial Council, as it was entitled to do.

Against this background, a preliminary injunction is appropriate for the following reasons:

- o Ms. Golinski will likely prevail on her mandamus claim because OPM's duties under the Order are clear and certain, ministerial and Ms. Golinski has no other remedy available to her. OPM, moreover, has waived any and all defenses to the enforcement of the order at issue.
- o As a result of OPM's actions, Ms. Golinski is suffering, and will continue to suffer, irreparable injury. She continues to suffer, on a daily basis, unlawful discrimination in the terms of her employment. That discrimination cannot be remedied in any way other than by injunctive relief as there are no comparable health insurance plans available on the market.
- o The balance of hardships tips strongly in Ms. Golinski's favor. She has scrupulously followed the only avenue available to her for resolution of her claim, and has obtained, from the Chief Judge of the Ninth Circuit, an order granting her total relief. OPM, by contrast, will suffer no harm if it is ordered to comply with the Chief Judge's order.
- o The public interest favors enforcing Judge Kozinski's order, rather than endorsing OPM's approach.

Assuming that, at the end of our call, OPM is not willing to stipulate to entry of a preliminary injunction by which it agrees to comply with Judge Kozinski's order and that you have not persuaded me that we should not seek such relief, we will file a motion for a preliminary injunction. We will, promptly thereafter, need to seek an order shortening time for the opposition and hearing on that motion. We will propose and will seek a hearing twenty-eight days from tomorrow: February 23, 2010. We will ask that the opposition be filed by February 9, and the reply by February 16.

Now that you know what we intend to argue, please be prepared to speak with us about scheduling tomorrow as well.

Regards,

James R. McGuire | Morrison & Foerster LLP
425 Market Street | San Francisco, California 94105
415.268.7013 | 415.268.7522 (fax)

From: Bressler, Steven [mailto:Steven.Bressler@usdoj.gov]

Sent: Monday, January 25, 2010 3:59 PM
To: McGuire, James R.
Cc: Dresser, Gregory P.; Park, Grace Y.
Subject: RE: Golinski v. OPM

James,

I am afraid we may have had a couple of misunderstandings or miscommunications when we spoke last week. You told me last Wednesday that you expected to file a motion for preliminary injunction the next day, i.e., last Thursday, and that you intended to file a motion to shorten the time for hearing shortly thereafter. Accordingly, I expected to see your motion for injunction last week and to review it briefly before discussing a schedule. In fact, we must see your motion and supporting materials before OPM can take a definitive position on scheduling. I.e., we need to know what we're responding to before we determine how long we'll need to respond.

I also asked you on Wednesday what you had in mind for a schedule, and I understood our conversation to be tentative at that time. If there is more you can tell me now -- what do you have in mind?

As for meeting and conferring -- the only aspect of your planned emergency motion that I remember discussing in substance last week was Ms. Golinski's arguments concerning irreparable harm. Like you, I am not optimistic that we will be able to fully resolve the matter. But I don't think we had a full conversation. It is now after close of business here in D.C.; can we talk tomorrow morning (your time)? We can discuss scheduling then, as well, although, again, I think it will have to be preliminary on my end until we see your moving papers.

Thanks,
Steve

From: McGuire, James R. [mailto:JMcGuire@mofocom]
Sent: Monday, January 25, 2010 6:31 PM
To: Bressler, Steven
Cc: Dresser, Gregory P.; Park, Grace Y.
Subject: Golinski v. OPM

Steve:

I write to follow up on two issues from our call last week.

First, after we spoke last Wednesday, it was my understanding that you were going to get back to me about our request that OPM stipulate, subject to Court approval, to permit Ms. Golinski's motion for a preliminary injunction to be heard on shortened time. I have not heard from you. We intend to file a motion for a preliminary injunction tomorrow and, at the same time, will ask the Court to shorten the time for opposition and hearing. Unless I hear differently from you, I will represent to the Court that we attempted to obtain OPM's agreement on that issue, but were unsuccessful.

Second, in connection with the preliminary injunction motion itself, Judge Armstrong's standing order (which I had not reviewed when we spoke) requires the parties to meet and confer in advance of the filing of a motion to attempt to resolve the matter. You and I briefly discussed the substance of the motion last week, and it is our understanding that OPM is not willing to stipulate to this relief. My sense is that we have a difference of opinion about a legal issue that we can only resolve through judicial intervention. If I am mistaken about that, or you believe we need to discuss it further, please let me know.

Regards,

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