

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 10-cv-01045-MSK-MJW

TORI McMECHAN

Plaintiff,

v.

TOWN OF NUNN, BOARD OF TRUSTEES OF  
THE TOWN OF NUNN, and JENNY JOHNSON

Defendants.

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**SCHEDULING ORDER**

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**1. DATE OF CONFERENCE  
AND APPEARANCES OF COUNSEL**

The Scheduling Conference is scheduled to be held on July 30, 2010, at 9:30 a.m.  
before Magistrate Judge Michael J. Watanabe.

Plaintiff Tori McMechan was represented by:

Mark Cohen, #13178  
The Cohen Law Group  
A Professional Corporation  
110 Snyder Street, 2<sup>nd</sup> Floor  
P.O. Box 617  
Nederland, CO 80466  
Tel: 303-258-0561  
Email: [mark@cohenslaw.com](mailto:mark@cohenslaw.com)

Defendants were represented by:

Mark C. Overturf, #15188  
Meredith L. McDonald, #31384  
Overturf, McGath, Hull & Doherty, P.C.  
625 East 16th Avenue  
Denver, CO 80203  
Tel: 303-860-2848  
Email: [mco@omdhlaw.com](mailto:mco@omdhlaw.com), [mlm@omdhlaw.com](mailto:mlm@omdhlaw.com)

## **2. STATEMENT OF JURISDICTION**

Jurisdiction is proper pursuant to 28 U.S.C. § 1331.

## **3. STATEMENT OF CLAIMS AND DEFENSES**

### *a. Plaintiff's Statement of Claims.*

On or about January 16, 2006, the Defendant Town's then current Board of Trustees hired Plaintiff to serve as the Town's Clerk, Treasurer, and Court Clerk. The Board formally appointed her in February of 2006 and again in April of 2008. On January 29, 2010, the Town served a Notice of Hearing on Plaintiff that summarized certain allegations against Plaintiff and notified her that a hearing concerning those charges would be held on February 4, 2010. That hearing took place, and at the conclusion of it the Defendant Board of Trustees voted to remove Plaintiff from her offices.

Plaintiff filed a Complaint in the District Court of Weld County on March 6, 2010, which was not served on the Defendants. [By law the cause of action set forth in that Complaint under C.R.C.P. 106(a)(4) had to be filed within thirty days of the termination hearing]. Plaintiff filed her Amended Complaint in the District Court of Weld County on April 2, 2010. Defendants, after being properly served, removed the action to the United States District Court for the District of Colorado pursuant to 28 U.S.C. § 1441.

Plaintiff's Amended Complaint asserts eleven claims for relief:

1. Review under C.R.C.P. 106(a)(4);
2. Relief under the Colorado Open Meetings Law, §§ 24-6-401 and 24-6-402, C.R.S.;
3. Relief under the Colorado Open Records Act, § 24-72-200.1 C.R.S., et. seq.;
4. Breach of contract arising out of unpaid wages;
5. Failure to promptly pay wages owed as required by the Fair Labor Standards Act, 29 U.S.C. § 201, et. seq.;
6. Unjust enrichment;
7. Breach of contract as to good faith and non-wage issues;
8. Deprivation of rights under 42 U.S.C. § 1983;
9. Interference with contract (as to Defendant Johnson only);
10. Outrageous conduct (as to Defendant Johnson only). (Note that the Amended Complaint erroneously labeled Plaintiff's Tenth Claim for Relief as one for interference with contract rather than outrageous conduct); and
11. Defamation (as to Defendant Johnson only).

*b. Defendants*

**Defendants deny any allegations of any wrongdoing, as alleged by Plaintiff. Defendants further assert the following affirmative defenses:**

- 1. Plaintiff's Amended Complaint fails to state a claim upon which relief may be granted.**
- 2. Plaintiff's claims are frivolous and groundless, entitling Defendants to their reasonable costs and attorney's fees in incurred in defending this suit.**

3. Plaintiff's claims against Jenny Johnson may be barred, as Ms. Johnson may be entitled to qualified immunity.

4. Plaintiff's claims are barred or reduced by Plaintiff's comparative negligence/fault.

5. Any alleged negligence on the part of these Defendants was not the proximate cause of Plaintiff's alleged damages, injuries and losses.

6. Plaintiff's claims are barred or reduced by Plaintiff's failure to take reasonable steps to minimize or mitigate her alleged losses or damages.

7. Plaintiff's claims are barred by the doctrines of release, waiver, estoppel, unclean hands, and/or laches.

8. Some or all of Plaintiff's claims may be barred by the applicable statute of repose and/or statute of limitations.

9. Plaintiff's claims may be barred or reduced by operation of compromise, release, accord and satisfaction, and/or waiver.

10. Plaintiff's claims are limited or barred by Plaintiff's failure to complete a condition precedent to Defendants' obligations.

11. Plaintiff's claims are barred or limited by the provisions of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*

12. Plaintiff has failed to exhaust all administrative remedies and prerequisites prior to filing her Amended Complaint.

#### 4. UNDISPUTED FACTS

The following facts are undisputed:

**1. Plaintiff Tori McMechan served as the Town of Nunn's Clerk until her removal on February 4, 2010.**

**2. Defendant Town of Nunn ("Town") is and was at all times relevant a Colorado statutory town with its principal office at its Town Hall at 185 Lincoln Avenue, Nunn, Colorado 80648.**

**3. Defendant, Board of Trustees of the Town of Nunn ("Board"), is and was at all times relevant to this action the body in which the legislative and corporate authority of the Town is vested. The Board's principal address is 185 Lincoln Avenue, Nunn, Colorado 80648.**

**4. The parties may stipulate to further facts after discovery has concluded, as part of the Pre-Trial Order in this matter.**

#### **5. COMPUTATION OF DAMAGES**

Plaintiff claims the following damages:

**1. Economic damages.**

a. Wages owed in the amount of \$1,131.55.

b. Lost wages in an amount to be proven at trial, but believed to be at least \$206,400.00. This figure was determined as follows. Ms. McMechan earned \$15.00 per hour while employed by the Town. She believes, based on her familiarity with the job market in Nunn, that the most she could earn in Nunn right now is \$9.00 or \$10.00 per hour. Using the figure of \$10.00 per hour, that results in a loss of \$200.00 per 40-hour week. With 4.3 weeks per month, that is a loss of \$860.00 month or \$10,320.00 per year. But for the actions of Defendants, Ms. McMechan reasonably believes she would have been

reappointed for consecutive terms and served at least another twenty years, resulting in a loss of \$206,400.00. A prior Town Clerk served for decades, and the only written performance reports provided to Ms. McMechan by the Town were highly favorable. The history of the Town has been to reappoint the Town Clerk if she is doing a good job.

c. Lost future benefits. At the time of her termination Ms. McMechan was entitled to three weeks of paid vacation (\$1,800.00 per year), one personal day per year (\$120.00 per year), and 4 hours of sick pay per month (\$720.00) per year. Multiplying those figures by twenty years results in an additional loss of \$52,800.00.

d. Travel costs. The Town of Nunn is approximately 28 miles from Greeley and 32 miles from Fort Collins. Assuming, for sake of argument, that Ms. McMechan could find a job in Greeley or Fort Collins that would pay \$15.00 per hour, she would incur expenses for gasoline and wear and tear on her vehicle. Using the figure of 60 miles (round trip) per day, that is 300 miles per week, 1,290 miles per month (using 4.3 weeks per month) and 15,480.00 miles per year. At 50 cents per mile, that is \$7,740.00 per year, which amounts to \$154,800.00 over twenty years.

e. Lost time. Assuming Ms. McMechan found employment in Greeley or Fort Collins at \$15.00 per hour, she would spend a minimum of one hour each day driving to and from work – an inconvenience she would not have to suffer but for the actions of Defendants. That is 21.5 hours per month or 258 hours per year. At \$15.00 per hour, that works out to \$3,870.00 per year, and \$77,400.00 over twenty years.

f. Moving expenses. If Ms. McMechan must move away from the Town of Nunn in order to find suitable employment and to avoid the hostile climate that Defendants have

created in the Town of Nunn, she would like to move her modular home to a new location. To do this she would have to pay off the current loan on the home, which is approximately \$170,000.00. She would also incur the actual cost of moving the home and her belongings. She believes there is no equity in her home.

- g. Attorney's fees and costs as allowed by law.
- h. Damages available by statute.
- i. Plaintiff reserves the right to seek exemplary damages.

Note: all of these calculations are subject to being revised as this case progresses, pending development of the case and input from experts.

**2. Non-economic damages:**

- a. Emotional distress / pain and suffering - \$250,000.00.
- b. Damage to Plaintiff's reputation - \$250,000.00.

**6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED. R. CIV. P. 26(f)**

- a. Date of rule 26(f) meeting: **Monday June 7, 2010.**
- b. Names of each participant and party he represented: **Mark Cohen participated on behalf of the Plaintiff. Mark C. Overturf and Meredith L. McDonald participated on behalf of the Defendants.**
- c. Statement as to when Rule 26(a)(1) disclosures were made or will be made. **The parties have agreed to exchange their Fed. R. Civ. P. 26(a)(1) disclosures no later than July 23, 2010.**
- d. Proposed changes, if any, in timing or requirement of disclosures under Fed.

R. Civ. P. 26(a)(1). **The parties do not propose any changes.**

e. Statement concerning any agreements to conduct informal discovery, including joint interviews with potential witnesses or joint meetings with clients to discuss settlement, or exchanging documents outside of formal discovery. If there is agreement to conduct joint interviews with potential witnesses, list the names of such witnesses and a date and time for the interview which has been agreed to by the witness, all counsel, and all *pro se* parties. **The parties have not entered into any such agreements.**

f. Statement concerning any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system, telephone depositions, joint repositories for documents, use of discovery in other cases, and extensive use of expert affidavits to support judicial notice. **Counsel and *pro se* parties will use a unified exhibit numbering system if required by the practice standards of Judge Krieger.**

g. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form. In such cases, the parties must indicate what steps they have taken or will take to (i) preserve electronically stored information; (ii) facilitate discovery of electronically stored information; (iii) limit the associated discovery costs and delay; (iv) avoid discovery disputes relating to electronic discovery; and (v) address claims of privilege or of protection as trial-preparation materials after production of computer-generated records. **The parties anticipate some electronic discovery. At this point, the parties do not**

**know how extensive such discovery will be. The parties have agreed to produce any computer generated records on CD or other acceptable media, where practicable. Defendants have preserved a copy of the Town of Nunn's computer upon which Plaintiff McMechan worked while employed with the Town of Nunn, as it existed upon receipt from the Weld County Sheriff's office. Defendants have also requested that Ms. McMechan preserve the contents of her computer(s) and other electronic devices.**

h. **Statement summarizing the parties' discussions regarding the possibilities for promptly settling or resolving the case. The parties are discussing settlement opportunities and are amenable to settlement discussions. The parties will report the results of the settlement discussions to Magistrate Judge Watanabe by July 23, 2010. The parties will also e-mail a confidential settlement statement in Adobe pdf format to Magistrate Judge Watanabe on or before July 23, 2010. This statement will briefly outline the facts and issues and the possibilities for settlement, including settlement authority from the client.**

## **7. CONSENT**

All parties have not consented to the exercise of jurisdiction of Magistrate Judge Watanabe to conduct proceedings in this action consistent with this Court's ORDER OF REFERENCE TO UNITED STATES MAGISTRATE JUDGE dated June 1, 2010.

## **8. DISCOVERY LIMITATIONS**

a. **Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules. The parties do anticipate**

**deviating from the presumptive number of depositions or interrogatories prescribed in F.R.C.P. 26 and 30. There may be up to ten depositions per side, plus experts without leave of the Court. There may be up to 25 interrogatories per party.**

b. Limitations which any party proposes on the length of depositions. **The parties agree to the presumptive seven-hour limit per deponent, exclusive of breaks.**

c. Limitations which any party proposes on the number of requests for production and/or requests for admission. **The parties agree to limit requests for production of documents to 25 and requests for admission to 25 for each party.**

d. Other Planning or Discovery Orders.

#### **9. CASE PLAN AND SCHEDULE**

a. Deadline for Joinder of Parties and Amendment of Pleadings: **September 15, 2010.**

b. Discovery Cut-off: **February 28, 2011.**

c. Dispositive Motion Deadline: **March 28, 2011.**

d. Expert Witness Disclosure

(1) Anticipated fields of expert testimony: **Plaintiff anticipates presenting expert testimony in the field of economics as it relates to lost income, lost future income. Plaintiff may also presenting expert testimony in computer forensics. Defendants anticipate presenting rebuttal experts in fields identified by Plaintiff.**

(2) Limitations which the parties propose on the use or number of expert witnesses. **Two experts per side.**

- (3) The parties shall designate all experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or **December 1, 2010**.
- (4) The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before **January 3, 2011**.

Notwithstanding the provisions of Fed. R. Civ. P. 26(a)(2)(B), no exception to the requirements of the Rule will be allowed by stipulation unless the stipulation is in writing and approved by the court. In addition to the requirements set forth in Rule 26(a)(2)(B)(i)-(vi), the expert's written report also must identify the principles and methods on which the expert relied in support of his/her opinions and describe how the expert applied those principles and methods reliably to the facts of the case relevant to the opinions set forth in the written report.

e. Identification of Persons to Be Deposed: **All depositions shall be completed by February 28, 2011.**

<i>Name of Deponent</i>	<i>Good Faith Estimate Expected Length of Deposition</i>
Tori McMechan	7 hours
Jenny Johnson	4 hours
Joyce Taylor	2-3 hours
Karen Burd	2-3 hours
Tom Bender	2-3 hours
Brian Crossier, Cole and Crosier, P.C. (Auditing firm)	2-3 hours

State Auditor	2-3 hours
Crystal Dorsey, State Auditor's office	2-3 hours
Sue Frederiksen	2-3 hours
Plaintiff's Economics Expert	2-3 hours
Plaintiff's Computer Forensics Expert	2-4 hours
Christy Alexander	2-4 hours
Jeffrey Pigue	2-4 hours
Amy Sharrah	2-4 hours
Sid Johns	2-4 hours
Mike Clement	2-4 hours
Representative from Powertech	2-4 hours

**The parties may elect to depose additional witnesses as discovery continues.**

f. Deadline for Interrogatories: **Served by January 25, 2011.**

g. Deadline for Requests for Production of Documents and/or Admissions:

**Served by January 25, 2011.**

**10. DATES FOR FURTHER CONFERENCES**

a. A settlement conference will be held on **October 28, 2010, at 10:00 o'clock a.m.** It is hereby ordered that all settlement conferences that take place before the magistrate judge shall be confidential.

( ) *Pro se* parties and attorneys only need be present.

(X) *Pro se* parties, attorneys, and client representatives with authority to settle must be present. (NOTE: This requirement is not fulfilled by the presence of counsel. If an insurance company is involved, an adjustor authorized to enter

into settlement must also be present.)

(X) Each party shall submit a Confidential Settlement Statement to the magistrate judge on or before **October 25, 2010**, outlining the facts and issues in the case, as well as the strengths and weaknesses of their case.

b. Status conferences will be held in this case at the following dates and times:

**Not set at this time.**

c. A final pretrial conference will be held in this case on \_\_\_\_\_, 2011 at \_\_\_\_ o'clock \_\_.m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than five (5) days before the final pretrial conference. **To be set by Judge Krieger.**

#### **11. OTHER SCHEDULING MATTERS**

a. Identify those discovery or scheduling issues, if any, on which counsel after a good faith effort, were unable to reach an agreement. **None.**

b. Anticipated length of trial and whether trial is to the court or jury: **The parties anticipate a 5-day trial to a jury.**

c. Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facility at 212 N. Wahsatch Street, Colorado Springs, Colorado. *[Determination of any such request will be made by the magistrate judge based on the individual needs of the case and the availability of space and security resources.]* **None.**

#### **12. OTHER MATTERS**

a. The parties filing motions for extension of time or continuances must comply with

D.C.COLO.LCivR 6.1D. by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all pro se parties.

b. Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by Judge Krieger.

c. With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1A.

d. In addition to filing an appropriate notice with the clerk's office, a pro se party must file a copy of a notice of change of his or her address or telephone number with the clerk of the magistrate judge assigned to this case.

e. In addition to filing an appropriate notice with the clerk's office, counsel must file a copy of any motion for withdrawal, motion for substitution of counsel, or notice of change of counsel's address or telephone number with the clerk of the magistrate judge assigned to this case.

**f. Plaintiff anticipates filing a motion for leave to file a Second Amended Complaint to correct one error in the Amended Complaint and clarify issues. Further, Plaintiff intends to seek leave to add claims for relief that will include a claim for wrongful discharge in violation of public policy. Plaintiff sent a notice to the Town of Nunn, on April 12, 2010, notifying the Town, as required by the Colorado Governmental Immunity Act, that Plaintiff was asserting a claim for wrongful discharge in violation of public policy.**

**g. Defendants have repeatedly requested that Plaintiff provide the Town of Nunn with the password to the Town's computer, which was set during Plaintiff's**

tenure as Town Clerk. Defendants need this password in order to conduct meaningful discovery in this matter, and to conduct Town business. Plaintiff denies that the password was property of the Town of Nunn and denies that the Defendants are unable to access the Town's computer. Plaintiff asserts each Town employee had a separate password. Plaintiff will not reveal her password until there is a Stipulation in effect that assures that a control copy of the hard drive is maintained.

h. Around the time of her termination, Defendants claim Plaintiff was observed removing boxes of material from the Town Hall. Defendant Town of Nunn needs to have these documents returned. Plaintiff denies wrongfully removing any documents.

i. Defendants contend that if electronic discovery beyond merely producing existing documents on a computer is requested, the requesting party must pay for such discovery.

### 13. AMENDMENTS TO SCHEDULING ORDER

The parties acknowledge that the scheduling order may be altered or amended only upon a showing of good cause.

**DATED** this \_\_\_\_ day of August, 2010, Nunc Pro Tunc July 30, 2010.

BY THE COURT:

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MICHAEL J. WATANABE  
U.S. MAGISTRATE JUDGE  
DISTRICT OF COLORADO

s/ Mark Cohen

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