

Daily Journal

OCTOBER 24, 2018

TOP BOUTIQUES 2018

LITIGATION

McManis Faulkner

SAN JOSE

James McManis and law partner William Faulkner are proud of their long record of taking tough cases and giving back to the profession over their 40-year run. That ethos got tested when the firm's seven partners decided last year to offer pro bono representation to an unpopular client who happened to be on the local bench. Santa Clara County Superior Court Judge Aaron Persky was under sustained hostile rhetorical fire from citizens demanding his recall over his perceived lenient sentencing of a Stanford University athlete to six months in jail for sexual assault and attempted rape.

The partners believed the issue was key to the community's relations with the courts. "We still do," said Elizabeth Pipkin, chair of McManis Faulkner's civil litigation practice. "We felt it was very important as a matter of judicial independence."

Despite the firm's effort to challenge the recall on procedural grounds — arguing that the state, not the county should have conducted the election because judges are state officers — the courts rejected the challenge and Persky was turned out of office in the June primary by 61.51 percent of the county's voters. *Persky v. Bushey*, 17CV314311 (Santa Clara Super. Ct., filed Aug. 11, 2017). The named defendant is the county registrar of voters. After the county bench recused itself and recall proponents challenged one Santa Cruz County judge, the Judicial Council appointed Judge Kay



Jana Ašenbrennerová / Special to the Daily Journal

From left, William Faulkner, Tyler Atkinson, Christine Peek, James McManis, Johanna Oh and Michael Warren of McManis Faulkner.

Tsenin of the San Francisco County Superior Court to hear the case.

Promoting the recall was Stanford Law School Professor Michele Dauber. Since the election she has pursued a \$112,000 fees and costs request against Persky, which McManis Faulkner is opposing. "She's arguing that she acted as a private attorney general and is owed fees," Pipkin said. "We feel confident that legally, that's not what she was doing. It's disappointing that Professor Dauber would choose to ask for these exorbitant fees after Judge Persky was convicted in the court of public opinion despite his long successful career on the bench. The fees, if granted, would have to come out of his pocket." A fees hearing was set for Oct. 22.

In another locally controversial case, the firm represented a fe-

male Chinese-American Ph.D. student and registered nurse who was roughed up and violently arrested during a traffic stop by sheriff's deputies. A jury found excessive force and awarded her \$40,000; McManis Faulkner got \$350,000 in fees. A 9th U.S. Circuit Court of Appeals panel affirmed the outcome in March. *Chang v. County of Santa Clara*, 16-17163 (9th Cir. March 6, 2018).

Lawyers at McManis Faulkner said they received solid backing from clients and others in the community for representing Persky. Christine E. Peek, the partner who is litigating the case, said, "It is important for a uniform system of justice that the same recall procedures apply to all judges throughout the state. I am honored to represent Judge Persky in standing up for ju-

dicial independence and the rule of law in California."

Peek, who joined the firm as a law clerk even before getting her bar card in 2004, added that McManis Faulkner is an ideal place to learn trial skills. "I was appearing in court within two weeks of being sworn in," she said. "Our firm has a proud tradition of offering early courtroom experience and a collegial environment in which to develop trial skills."

Pipkin found that the Persky litigation became an unusually high-profile matter even for a firm used to big cases. "I came out of one restraining order hearing and there were TV cameras," she said. "That's rare for a small town civil lawyer in San Jose."

— John Roemer