

**OFFICE OF ADMINISTRATIVE HEARINGS**

LAURA HAMILTON,

Complainant,

v.

NEWPORT HOSPITAL & HEALTH  
SERVICES,

Respondent.

Case No. 01-2023-GOV-00038

MOTION FOR ATTORNEYS' FEES AND  
COSTS

*I've been doing this for ten years now. And I can say without a doubt, this has been probably the greatest hearing I've had an opportunity to be a part of. I mean, I've never been a part of attorneys who are so well prepared, on point, that I have ever witnessed.*

Honorable TJ Martin, Administrative Law Judge, Day 5, 6:37:59.

**I. INTRODUCTION & SUMMARY OF ARGUMENT**

On July 5, 2023, the Court found that Respondent, Newport Hospital & Health Services (NHHS) retaliated against Ms. Hamilton, awarded her damages, and fined NHHS's current and former CEO \$3,000/each for their retaliatory acts, and further fined NHHS's board chairperson \$1,000. The Court also found it appropriate that NHHS pay Ms. Hamilton's costs and attorneys' fees. To that end, Ms. Hamilton brings this motion.

**II. ARGUMENT**

**A. THE COURT SHOULD AWARD MS. HAMILTON ATTORNEYS' FEES.**

***1. Plaintiff's lodestar.***

The Local Government Whistleblower Protection Act allows for an award of attorneys' fees and costs to the prevailing party. RCW 42.41.040(7). Attorneys' fees in employment cases

like Ms. Hamilton's are calculated under the lodestar framework that multiplies the attorney's reasonable hourly rate by the number of hours reasonably expended. *Bowers v. Transamerica Title Co.*, 100 Wn.2d 581, 537 (1983).

***Reasonable hourly rates.*** As a starting point, this was not an easy case to work up and try. It was Ms. Hamilton's word verses the word of NHHS's current and former CEO, members of the NHHS Board of Directors, and many other NHHS witnesses. Ms. Hamilton did not have one, willing, favorable witnesses in her corner. Indeed, the salient Defense witnesses, e.g. Wilbur, Keane, and Board members not only vehemently denied retaliating against Ms. Hamilton but then attempted to paint Ms. Hamilton as an abusive tyrant running amok inflicting "stress" on the likes of, for example, gym owning high school football coaches such as Casey Scott. Accordingly, it took counsel experienced with seeing through similar "blame the whistleblower" defenses that, as was certainly the case here, come laced with piles of statements attacking not only the whistleblower's work performance but her integrity as well. Thus, the case had to be built upon circumstantial evidence acquired through limited discovery, but also through much evidence solicited "on the fly" through the direct or cross examination of NHHS witnesses. The testimony of many NHHS witnesses needed to be impeached or corrected through trial or impeachment exhibits. That evidence needed to be marshalled and organized and presented to the Court in an easily digestible manner with little-to-no preparation time. With that background in mind, the rates counsel requests are reasonable.

Mr. Crotty, Mr. Mensik and Mr. Bruner seek a \$500/hour rate in this case. (Crotty Decl. ¶ 7; Mensik Decl. ¶ 12; Bruner Decl. ¶ 11) Three federal courts have found Mr. Crotty's \$500/hour rate reasonable. Most recently the Eastern District of Washington found Mr. Crotty's \$500/hour rate to be reasonable in an Age Discrimination in Employment Act (ADEA) discrimination and

retaliation case. *O’Kell v. Haaland*, No. 2:18-CV-00279-SAB, 2022 WL 19571657, at \*3 (E.D. Wash. July 8, 2022) (“[T]he Court awards Mr. Crotty a \$500/hour rate.”). Further, Mr. Mensik has significant experience defending retaliation actions brought under Section 211 of the Energy Reorganization Act of 1974, 42 U.S.C. § 5851, which informed his approach and preparation for trial in this case. (Mensik Decl. ¶ 12). An award of \$500/hour rate for Mr. Crotty, Mr. Mensik and Mr. Bruner is reasonable in Spokane County, based upon attorneys’ fees awards in the Eastern District of Washington. *See* Crotty Decl. ¶ 14-16, Ex. E (for instance, an eight-year attorney in a class action settlement, with what appears to be zero trial experience, was awarded \$600/hour). Accordingly, given the rates approved for lawyers with less (or zero trial) experience coupled by this Court’s statement that it had “never been a part of attorneys who are so well prepared, on point, that I have ever witnessed,” the \$500/hour rate is reasonable and justifiable.

***Hours reasonably expended.*** The hours expended by Mr. Crotty during this case from client intake to the Judgment’s issuance is 149.2. (Crotty Decl. ¶ 8-9 and Exhibit B) The hours expended by Mr. Mensik in this case from association to judgment are 110.5 hours. (Mensik Decl. ¶ 13-14, Exhibit B). The hours expended by Mr. Bruner in this case from association to judgment are 2.8 hours. (Bruner Decl. ¶ 12-13, Exhibit A). Taken together, Mr. Crotty, Mr. Mensik and Mr. Mensik request \$131,250.00 (\$55,250.00 – Mensik; \$74,600.00 – Crotty; \$1,400.00 - Bruner) from intake to verdict. Plaintiff’s counsels’ hourly rate and time spent litigating this case are reasonable.

***Fees on fees.*** The Court should also award Plaintiff’s counsel fees expended on preparing this post-trial fee petition as such “fees on fees” are recoverable. *Bowers*, 100 Wn. 2d at 599, 675 P.2d 193 (1983); *Kinney v. International Broth. of Elec. Workers*, 939 F.2d 690, 695 (9th Cir. 1991). Mr. Crotty and spent 7.5 hours on this fee petition which is \$3,750.00 at the \$500/hour rate. (Crotty Decl. ¶ 10, Exhibit C) Mr. Mensik has spent 2.2 hours on this fee petition which is

\$1,100.00 at the \$500/hour rate. (Mensik Decl. ¶ 15, Exhibit B) The Court should award \$4,850.00 for fees associated with post-judgment fee petition work.

**B. COSTS AND LITIGATION EXPENSES.**

The Local Government Whistleblower Protection Act allows the prevailing party to recover costs. RCW 42.41.040(7). While that statute does not define “costs”, cases analyzing employment cases note “our Supreme Court has held that in discrimination cases costs may include out-of-pocket expenses for transportation, lodging, parking, food and telephone expenses, photocopying” *Martinez v. City of Tacoma*, 81 Wash. App. 228, 245 (1996). Indeed, the State Supreme Court notes:

[W]e adopt the federal rule allowing more liberal recovery of costs by the prevailing party in civil rights litigation, in order to further the policies underlying these civil rights statutes: to make it financially feasible to litigate civil rights violations, to enable vigorous enforcement of modern civil rights legislation while at the same time limiting the growth of the enforcement bureaucracy, to compensate fully attorneys whose service has benefited the public interest, and to encourage them to accept these cases where the litigants are often poor and the judicial remedies are often nonmonetary. *Blair v. Washington State Univ.*, 108 Wash. 2d 558, 573 (1987).

To that end, Ms. Hamilton seeks to recover costs associated with hiring her expert witness, Erick West, as well as taking the depositions of Mr. Wilbur, Ms. Keane, and obtaining a copy of her own deposition. (Crotty Decl. ¶ 12-13 & Exhibit D)

**III. CONCLUSION**

Ms. Hamilton’s motion should be granted. The Court should:

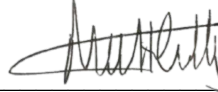
1. Award Ms. Hamilton **\$136,100.00** in attorneys’ fees.
2. Award Ms. Hamilton **\$7,912.77** in costs and litigation expenses.

For a total additional award of **\$144,012.77**. Further, the Court should award post-judgment interest at a rate of 12.0%.

DATED this 12th day of July 2023.

**RIVERSIDE LAW GROUP, PLLC**

By:



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**CERTIFICATE OF SERVICE**

The undersigned certifies that the above document was transmitted the below individuals:

Jenae Ball, via email

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July 12, 2023



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