

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

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ADELINE HAMBLEY,

Plaintiff,

v.

Case No: 23-7180-CZ

Hon. Jenny L. McNeill  
Sitting by SCAO Assignment

OTTAWA COUNTY,  
a Michigan County;  
OTTAWA COUNTY BOARD OF COMMISSIONERS; and  
JOE MOSS, SYLVIA RHODEA, LUCY EBEL,  
GRETCHEN COSBY, REBEKAH CURRAN,  
ROGER BELKNAP, and ALLISON MIEDEMA,  
Ottawa County Commissioners in their  
individual and official capacities,

Defendants.

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ORDER REGARDING PLAINTIFF'S MOTION FOR ATTORNEY FEES

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The Court having heard the argument of the parties, and reviewing the briefs;  
finds as follows:

History

The Plaintiff filed a Complaint on February 10, 2023.<sup>1</sup> Then on March 2, 2023,  
the Court granted a temporary restraining Order preventing the Defendants from  
terminating the Plaintiff. After the filing of the lawsuit, the Defendants passed a  
corrected resolution, stating that the prior board did not officially appoint the

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<sup>1</sup> The Plaintiff's filed a second amended complaint on November 29, 2023.

Plaintiff as the Health Director. Defendants filed a Motion for Summary Disposition on March 10, 2023 and Plaintiff filed a Motion for a Preliminary Injunction. An Amended Complaint was filed on March 24, 2023. A hearing was held on March 31, 2023, regarding the motions. The Court denied Defendants' Motion for Summary Disposition and granted the Plaintiff's Motion for Preliminary Injunction.

The Defendants appealed to the Court of Appeals. The Court of Appeals determined that this Court could issue the injunction, but also determined that the injunction did not prevent the Defendants from proceeding with terminating the Plaintiff, if they complied with MCL 46.11.

The Defendant's then proceeded with a termination hearing, but complied with the Statutory requirements under MCL 46.11(n). Plaintiff attempted to stop the hearing by filing a Motion to Enforce Preliminary Injunction on October 13, 2023, and a hearing was held with this Court on October 23, 2023. This Court denied the Plaintiff's Motion, as the Court of Appeals had ruled that a termination hearing could proceed as long as the County complied with the statute. The Defendant's proceeded with the termination hearing, which continued for several sessions in October and November of 2023. The parties appeared to have reached a resolution, but the County did not take a vote on the actual settlement.

On November 16, 2023, the Plaintiff filed a Motion to Enforce Settlement. A hearing was held on January 19, 2024. This Court denied the Motion, finding that the Defendants did not have a clear public vote on the settlement, as required by Michigan law. The parties attended mediation and resolved all of the issues, except

attorney fees. The Plaintiff requests that this Court order the Defendants to pay her actual attorney fees and costs. The Defendants argue that they should not be responsible for the Plaintiff's attorney fees and costs.

### *Law and Findings*

The general rule is that the prevailing party in litigation is not entitled to recover its attorney fees from the opposing party unless expressly allowed by statute, court rule, common law exception or by the parties contract. *Skaates v. Kayser* 333 Mich App 61,84 (2020). The Court addresses each of the potential statutes/request for fees individually.

### Open Meetings Act

Plaintiff claims that she is entitled to attorney fees under the Open Meetings Act. Under MCL 15.271, “ a court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.” However, in *Speicher v. Columbia Township Board of Trustees*, 497 Mich 125 (2014), the Michigan Supreme Court held that court costs and actual attorney fees may only be awarded “when a public body persists in violating the act, a suit is brought to enjoin such behavior and that suit is successful in obtaining injunctive relief.” The Court further found that this means injunctive relief, not just any relief. In this case, while the Plaintiff did obtain injunctive relief, she did not obtain such relief under the Open Meetings Act. In fact, the Open Meetings Act claim was added many months after the Court initial granted relief.

However, the parties chose to settle the claim before the Court could rule on the Open Meetings Act claim. The Plaintiff is correct that this Court found that the Defendants did not adequately describe what they were voting on, after the parties reached an initial settlement. Then the Plaintiff's amended the complaint to include a violation of the Open Meetings Act. If the case would have proceeded to trial, the court or a jury, could have found the Defendants in violation, but no trial occurred and no injunction under the Open Meetings Act entered.

The *Speicher* court interpreted the phrase of MCL 15.271(4) "succeeds in obtaining relief in the action." *Speicher* at 134. The Court determined that this language meant that court costs and actual attorneys fees under MC 15.271 are awarded only with a plaintiff seeks and obtains injunction relief. The Supreme Court specifically limited this to injunctive, and not equivalent, relief. Therefore, the Court finds that the Plaintiff is not entitled to attorney fees under the Open Meetings Act.

#### Whistleblower's Protection Act

Plaintiff also requested attorney's fees under the Whistleblower's Protection Act, MCL 15.362. alleging that the Defendant passing the February 28, 2023 Resolution was a violation of the Act.<sup>2</sup> Reasonable attorney fees are allowed as damages under the Act. "A Court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate." MCL 15.364.

In *Collister v. Sunshine Food Stores*, 166 Mich App 272 (1988), the Court

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<sup>2</sup> In *Charles Henry v. City of Detroit*, 234 Mich App 405 (1999), the Court upheld an award under the WPA for a police commander who reported a violation during a civil lawsuit.

stated that the purpose of the statute is to encourage persons who have been “deprived of their civil rights to seek legal redress, to insure victims of employment discrimination access to the courts and to deter discrimination in the work force..” *Id.* at 274. Further, the decision to grant an award of attorney fees is within the discretion of the trial court.

While the Court did not render a judgment on this matter, as the parties resolved all other issues, the Court may still order reasonable attorney fees. Public policy of Michigan favors settlement. *Stefanac v. Cranbrook Ed Community*, 435 Mich 155 (1990). To not allow the Plaintiff fees because they resolved the other issues, flies in the face of public policy. Further, MCL 15.364 specifically allows the award of attorneys’ fees if the Court determines the award is appropriate. The prior sentence uses the words “rendering judgment”, but the attorney fees section does not. The plain language of the statute is clear, and thus the Court may award attorney fees.

After she filed this lawsuit on February 10, 2023, the Defendants passed a resolution on February 28, 2023 stating that she was only an interim health officer. The Court found, and the Appellate Court upheld, that Plaintiff was the lawfully appointed health officer entitled to the protections of MCL 46.11. The Plaintiff argued that the Defendants brought charges against her for termination, in retaliation for filing this lawsuit. While the court did not make the final determination, the end result of the litigation was that the Plaintiff retained her position as the Health Officer. Thus, it is reasonable to conclude that the Defendants did not have a legal basis to terminate her. At the Hearing regarding the temporary

restraining order, this Court specifically asked the Defendant's attorney if the Defendants were arguing that the Plaintiff was not performing her job appropriately, and was told "absolutely not." The Court finds an attorney fee award is appropriate in this matter under the Whistleblower Statute.

### Unlawful Conduct

Recovery of attorney fees and costs has been allowed in limited situations where a party has incurred legal expense as a result of another party's fraudulent or unlawful conduct. *Ypsilanti Charter Township v. Kircher*, 281 Mich App 251 (2008); *Spectrum Health v. Grahl* 270 Mich App 248, 253 (2006) In Ypsilanti, the Plaintiff incurred substantial costs and attorney fees, which arose out of the defendant's illegal conduct. Under *Reed v. Reed*, 265 Mich App 131 (2005), the attorney fees are limited to the misconduct.

In this case, the Board clearly wanted to terminate the Plaintiff. The Court made a finding that the Board did not follow the law, as she was the duly appointed Health Officer. The Court of Appeals upheld that ruling, but allowed the Defendant to proceed with a hearing as allowed by law. Therefore, the Defendant is responsible for attorney fees as a result of the attempt to terminate her without a hearing. Further, the Defendants then proceeded with a termination hearing, which occurred over several sessions. The end result of the litigation, is that the Plaintiff maintains her status as the Health Officer, which was her request from the beginning. Her assertion that the Defendants had no basis to terminate her, and caused unnecessary litigation is logical, under the circumstances. The Court finds that attorney fees are

appropriate based on the Defendants conduct.

Krueger Case/Special Prosecutor Argument/MCR 2.695(F)

Plaintiff argues that this court is bound by *Krueger v. Ottawa County Board of Commissioners*, 428 Mich 300 (1987) and *Ottawa County Comptroller v. Ottawa County Probate Judge*, 156 Mich App 594 (1986). The Supreme Court remanded for reinstatement of the trial courts original judgment which included attorney fees to Clerk Kruger, even though the county in that case was the prevailing party. In this case, Plaintiff argues that she was the prevailing party as she was granted some injunctive relief and she is able to maintain her employment as the Health Director; therefore, she should be awarded litigation costs, just as Ottawa County provided in past litigation.

Defendants argue that the prior Ottawa appellate cases did not address attorney fees, so they are not relevant to the matter. Apparently, Ottawa County paid for the Plaintiff's (County Clerk) attorney, without the Court having to order the fees.

Plaintiff argues that the lawsuit was needed due to a conflict between the health officer and the county. She believes that the county was required to provide an attorney to her in this matter. She believes that the law suit was necessary and she cites MCL 49.155, where the prosecutor cannot act because of a conflict, a special prosecutor may be appointed. Plaintiff argues that the prosecutor would be corporate counsel as this was a civil matter. She argues that because of the conflict of interest, on the part of the Defendant's Corporation Counsel, and subsequent failure to file a petition with the attorney general's office requesting special counsel, requires that

the Defendants are liable for the Plaintiff's attorney fees.

The Court finds that it is not bound by actions of a prior circuit court case, as no appellate court decisions were made in the cases that counsel provided. Further, nothing presented to this Court indicates that the Ottawa Court actually ordered attorneys fees in that case.

MCL 49.155 provides that:

“The prosecuting attorney, or county corporation counsel in a county which has employed an attorney in lieu of the prosecuting attorney to represent the county in civil matters, shall give opinions, in cases where this state, a county, or a county officer may be a party or interested, when required by a civil officer in the discharge of the officer's respective official duties relating to an interest of the state or county.”

Further, the Court does not believe that it can order attorney fees under MCR 2.604(F).<sup>3</sup>

### REASONABLENESS OF THE FEES

The Controlling test for reasonableness of fees is stated in *Smith v Khouri*, 481 Mich 519 (2008) and *Pirgu v. United Servs Auto Association*, 499 Mich 269 (2016). The Supreme Court set out a three step process. The First step in analyzing the reasonableness of the requested attorney fees, is determining the fee customarily charged in the locality for similar legal services. *Smith* 481 Mich at 530. Then the Court multiplies that rate “by the reasonable hours expended in the case to arrive at a baseline figure. *Pirgu*, 499 Mich at 281. Last, the Court must consider the nonexclusive *Pirgu* factors (along with any other relevant factors) to determine if there should be any up or down adjustment. *Id.*

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<sup>3</sup> *Michigan Educational Employees Mutual Insurance v. Turow*, 242 Mich App 112 (2000).



*(1) Hourly Rate – Fee Customarily Charged*

In determining the reasonableness of the requested fees “a trial court should begin it’s an analysis by determining the fee customarily charged in the locality for similar legal services.” *Smith*, 481 Mich at 530. Typically, courts rely on the Economics of the Law Practice Surveys published by the State Bar of Michigan.

Attorney Howard’s hourly rate is \$500/hour. She is a shareholder in the law firm of Penske Smith PC and has been a licensed attorney for 22.5 years. Attorney Jere, has been a licensed attorney for 16.5 years, is also listed on billing statements at a rate of \$300/hour. Additionally, Plaintiff’s attorney utilized a paralegal, Natasha Robertson, who performed work under her supervision she has a bachelor degree and has worked as a paralegal since 2022, and her rate is \$100/hour.

Defendant argues that a reasonable hourly rate for attorney Howard is \$350/hour. Attorney Howard states that the 75th percentile rate for an equity partner/shareholder is \$500/hour.<sup>4</sup> The median rate of \$340 per hour in Ottawa county and above the rate of \$415 billing rate among attorneys at the 75th percentile in Ottawa county. Counsel is a shareholder in her law firm and has over 20 years’ experience. She specializes in the field of employment law and civil matters.

According to the 2023 State Bar of Michigan Economics of Law Survey, the hourly rate for law firm partners in the 75th percentile state wide is \$500 per hour. Attorneys engaged in civil rights litigation charge an average of \$350 per hour and

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<sup>4</sup> While the case is pending in Ottawa County, the Plaintiff’s attorneys are in Kent County. The economics of law survey has 75th percentile of attorneys in the Grand Rapids area as earning \$450 an hour. The median hourly rate is \$350/hour for a general civil lawyer would be at \$350/hour for the 75th percentile or as a civil rights lawyer would be at \$450/hour for the 75<sup>th</sup> percentile in Kent County as a whole; and the 95th percentile is \$620/hour

the hourly rate for attorneys of such practice at the 75th percentile is \$450 per hour.

The Court concludes that a billing rate of \$500 per hour is a reasonable hourly rate in this case. This is an unusual case, which required extensive and expeditious preparation. The hourly rate is in accord with counsel's experience and credentials, and no upward or downward adjustment is appropriate. The Court also finds that the \$300/hour for Attorney Jere is appropriate.

Under MCR 2.626 an award of attorney fees can include fees incurred by legal assistant. An hourly fee of \$100 for a paralegal is appropriate and in line with other courts awards for paralegal fees in this community. Therefore, the Court finds the paralegal rate is also appropriate.

*(2) Reasonable Number of Hours*

The next step is whether the number of hours expended by the Attorney is reasonable in this case. Plaintiff attached detailed billing reports. She is requesting time not only spent on the litigation, but also regarding plaintiff's termination hearing. Her position is that the two proceedings were intertwined and it was impossible to do one without the having the same attorney handling the other. Plaintiff feels that her attorney's work, helped improve her position and enabled her to stay employed. Plaintiff is requesting her fees and costs in the amount of \$166,209.24 as to the main litigation and \$21,970 as to the termination hearing.

The court has reviewed the statements. The time expended for the trial preparation work and court time seems to be consistent with the amount of litigation in this matter. The Defendants did not point out any particular item in the billings

that they considered a problem, but made general arguments regarding the *Pirgu* factors. They did not argue that the work was not performed by the Plaintiff's attorney. The Plaintiff's attorney provided statements, with charges utilizing six-minute increments. The Court agrees that the two proceedings were intertwined. The Plaintiff likely would not have been successful during the termination hearings without counsel. The court finds that the number of hours requested is reasonable.

### *(3) Pirgu Factors*

The third step is applying the *Pirgu* factors to the baseline award and multiplying the reasonable hourly rate by the reasonable number of hours expended provides a baseline figure. *Pirgu*, 499 Mich at 281. The court must consider the nonexclusive *Pirgu* factors to determine whether an upper down adjustment is appropriate. The factors are: (1) the experience, reputation and ability of the lawyer or lawyers performing the services (2) the difficulty of the case, i.e. the novelty and difficulty of the questions involved and the skill requisite to perform the legal service (3) the amount in question and the results obtained (4) the expenses incurred (5) the nature and length of professional relationship with the client (6) the likelihood, if apparent to the client, that acceptance of the particular employment will preclude other employment by the lawyer (7) the time limitations imposed by the client or by the circumstances; and (8) whether the fee is fixed or contingent. *Pirgu* 499 Mich at 281-282.

In this case, Plaintiff's attorney has significant experience in employment litigation and is a shareholder in her firm. Her hourly rate is an accord with her

experience and credentials. This is a novel case, and there was very little case law, directly on point with the issues in this case. There has been substantial public interest in the outcome of this litigation. While there was no financial settlement, Plaintiff was able to keep her job, which is a significant value to her and was her request from the onset of the litigation. Plaintiff's counsel spent significant amount of time on this case, having to be available quite often to react quickly to the actions of the defendant, and to the media attention the case garnered. The expenses were minimal, due to the litigation settling. The Court was clear to the parties that the case needed to be resolved quickly, either through mediation or a trial on the issues. The Plaintiff's attorney charged an hourly rate, which was not contingent upon the outcome of the litigation.

Defendant's argued that the Plaintiff only prevailed on one issue, and her remaining claims were never analyzed by this Court. They also stated that she filed many unnecessary motions, which she lost. The Defendants focused on the six counts that were dismissed by the Plaintiff.

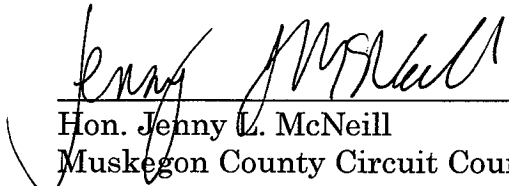
While the Plaintiff did not prevail on all of her motions, she prevailed on her main claim, which was to maintain her employment as the Health Director. To the credit of all the parties, a resolution occurred, instead of a trial on the matters. The Plaintiff maintains her employment, which was the goal of the litigation.

Therefore, the court finds that no adjustment is necessary under the Pirgu factors.

**ORDER**

The Court grants the Plaintiff's Motion for Attorney Fees and awards her counsel \$188,179.24 in attorney fees and costs. This order resolves the last pending claim and closes this case.

Date: 8/26/24

  
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Hon. Jenny L. McNeill  
Muskegon County Circuit Court Judge  
Acting by SCAO Assignment