

NORTH CAROLINA
COLUMBUS COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2021 MAR -4 P 12: 11

FILE NO. 20 CVS 1147

THE NEWS REPORTER CO,;
ATLANTIC CORPORATION;
GREY TELEVISION, INC., d/b/a WECT; and
MORRIS NETWORK, INC., d/b/a WWAY-TV,
LLC,

COLUMBUS CO, C.S.C.

BY



Plaintiffs,

ORDER AWARDING
ATTORNEY FEES

vs.

JODY GREENE, in his official capacity as
Sheriff of Columbus County,
Defendant.

This matter came on for hearing on February 8, 2021, pursuant to the Plaintiffs' statutory request for immediate relief, G.S. § 132-9, and Defendant's motion to dismiss. All parties were present, through counsel. C. Amanda Martin of Stevens Martin Vaughn & Tadych, PLLC, appeared for Plaintiffs. Brian Castro of Womble Bond Dickinson (US) LLP appeared for Defendant. At the conclusion of the hearing, the court heard from counsel briefly on the issue of attorney fees, and all parties agreed that both sides would submit memoranda and affidavits on that issue. The court has entered a final order on the substantive issues in favor of the Plaintiffs requiring the disclosure of public records, which order contained the following paragraph preserving the issue of attorney fees:

The Court holds open the issue of attorney fees. Because Plaintiffs prevailed and Plaintiffs seek attorney fees, the Court directs counsel for Plaintiffs to submit to the Court detailed affidavits setting out Plaintiffs' attorney's fees, itemizing the basis for them, and including a memorandum in support of the request. The Defendant may submit a memorandum in response to the items and memoranda submitted by the Plaintiffs, and shall let the court know if he wishes to be heard other than by way of affidavit or memorandum.

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The Court has now received from the Plaintiff her "Motion for an Award of Attorney Fees and Costs," an Affirmation signed by Amanda Martin as counsel submitted under the penalties for perjury, a detailed invoice reflecting time and billings in this case, and an affidavit of Eric M. David, all filed under current Emergency Directive 5. The court has also received and considered from Defendant his "Response in Opposition to Plaintiff's Motion for Attorney Fees." All of these documents are ordered filed in this action and made a part of the record. Neither party has requested any further hearing on the issues of costs or attorney fees.

From the submissions and from the record, as to Plaintiff's motion for Attorney Fees, the court makes the following findings of fact and conclusions of law:

1. The court incorporates and reaffirms the findings in the previously filed order resolving the substantive issue in favor of the Plaintiff.
2. This being an action filed for the disclosure of public records under chapter 132, and having been resolved in favor of the Plaintiff by an order requiring the disclosure of public records, plaintiff is entitled to make a claim for attorney fees under GS 132.9(c).
3. The Plaintiff sought to resolve this matter before trial, requesting that the matter go to mediation and attempting to reach a resolution through contacts and overtures to individuals reasonably calculated to bring about that end.
4. The Defendant through his employees and Public Information Officers did engage in conversations, and all of the contacts and discussions recorded in detail in Plaintiff's invoice were reasonable and appropriate.
5. The Defendant rejected mediation as an alternative dispute resolution procedure in this case.

6. The exhibits along with the testimony submitted during the hearing show that the time entries to obtain and examine documents and records as reflected in the invoice were reasonable.
7. The hourly rates charged by counsel and the paralegal on behalf of the Plaintiff were and are reasonable. The court makes the following further specific findings as to this issue:
 - a. Both sides in this case were represented by highly competent and experienced attorneys: the plaintiff by Amanda Martin from the firm of Stevens Martin Vaughn & Tadych in Raleigh; and the Defendant by Brian F. Castro and other counsel of Womble Bond Dickinson, also of Raleigh.
 - b. Determining attorney fees by hourly billing at a reasonable hourly rate is a fair and appropriate method for calculating attorney fees in this type of litigation.
 - c. The rates charged of \$400 per hour for lead counsel and lesser amounts for associate counsel and paralegals are the rates one would customarily expect for this type of litigation involving public officials and media outlets in Columbus County and Whiteville, N.C.
 - d. The court has considered the experience of the attorneys for both sides, the complexity of the issues presented, the importance of the public records in dispute, the explanations given for the inability to resolve the issues without litigation, and all other factors brought to the attention of the court by the Defendant in the hearing and brought forward in his memoranda and motions in opposition to Plaintiff's motion.

- e. In light of all of these considerations, the discounted fee of \$400 per hour for Ms. Martin, \$300 per hour for associated counsel Ms. Soja, and \$150 per hour for paralegal Pat Pritchard, which the court finds to be reasonably necessary, are rates that are reasonable and appropriate and commensurate with customary fees for this kind of representation expected and charged clients in Columbus County; and the allocation of time among counsel and the paralegal is reasonable and appropriate given the nature of this particular case and the supporting detail contained in the timeline in the invoice and as supported by Plaintiff's affidavits, which the court finds to be credible.
- f. The court has carefully examined the detailed invoice, and finds no entries that raise red flags suggesting that the time expended for which charges are carried forward are inflated, unreasonable, inappropriate, or not covered by the statute. The court has considered Defendant's contention that conversations with the County Attorney should be excluded, but the court finds and concludes that such conversations were reasonable and appropriate under these circumstances as an attempt to resolve the dispute and avoid litigation. After a careful examination, the court does not find any charges that are excessive, redundant, or otherwise unnecessary.
- g. The court finds the separation and breakout of expenses following the hourly charges to be reasonable and necessary charges that were incurred by counsel for Plaintiffs as a part of their legal representation.

h. Specifically, the court finds and concludes that the following allocation of fees as submitted by Plaintiff is reasonable, necessary, and appropriate; with the court noting that portions of the 65.7 hours actually incurred by Amanda Martin were billed at a reduced rate or not billed so as to reduce the total sought and allowed:

C. Amanda Martin 65.7* hours x \$400 = \$24,000.00
Elizabeth Soja 19.95 hours x \$300 = \$ 5,985.00
Pat Pritchard 8.35 hours x \$150 = \$ 1,252.50
Total fees \$ 31,237.50
Total expenses \$ 1,050.19

Total of Attorney Fees: \$32,287.69

8. All of the attorney fees incurred by Plaintiffs for which recovery is sought were attributable to the public records which were the subject of this litigation and for which disclosure was sought and ordered, and for no other purpose.
9. This action was brought in good faith, there is no bad faith or improper motive, and it was not filed frivolously.
10. The court has considered the arguments brought forward by Defendant that the attorney fees should be denied or reduced for the reason that Defendant sought legal advice. The court specifically finds that although Defendant claims to have attempted to find an attorney for advice, the Defendant at no time obtained legal advice and clearly never followed the advice given by any attorney at any time before the filing of this action. The direct and uncontradicted testimony at trial shows that the withholding of

these public records was never recommended or approved by legal counsel so as to bring the Defendant's conduct within the protection and mitigation of the statute.

11. From the submissions of the parties and the conduct of the trial, the court further finds and concludes that the fees sought and herein awarded are appropriate considering the many factors related to reasonableness, including:

- a. counsel for the Plaintiff (and for the Defendant) exhibited great skill and experience,
- b. counsel was adept at identifying the important issues and did not waste time,
- c. the issues required a level of legal expertise that was exhibited by both attorneys as they litigated the matter,
- d. this case involved specialized questions of law which required careful research (by both sides) and the gathering of citations and references which were helpful to the court,
- e. the issue was of vital importance to both the public media who pursued the records under our public records laws and to the public officials involved in this litigation, and
- f. the effectiveness of counsel in these protracted negotiations and in finally prevailing in this hotly contested litigation.

12. The court has considered all other circumstances that would mitigate or absolve the Defendant of liability for attorney fees, and further finds that the Defendant did not reasonably rely upon any of those factors set out in GS 132-9:

- a. The Defendant did not rely upon any judgment or an order of a court applicable to the governmental unit or governmental body;
- b. The Defendant did not rely upon any published opinion of an appellate court, an order of the North Carolina Business Court, or a final order of the Trial Division of the General Court of Justice;
- c. The Defendant did not rely upon any written opinion, decision, or letter of the Attorney General.

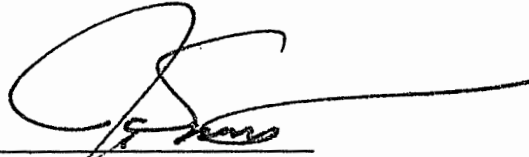
13. The court has considered the Defendant's remaining arguments that the withholding of the records and the delay in disclosures were *de minimis*; but as set out more fully in the court's previously filed order, those contentions are without merit or mitigating weight.

FROM THE FOREGOING FINDINGS, THE COURT CONCLUDES:

1. The attorney fees as submitted and requested are reasonable, necessary, appropriate, customary, and actually incurred by Plaintiff.
2. The Plaintiff is entitled to recover attorney fees as having substantially prevailed in compelling the disclosure of public records under GS 132-9(c).
3. The Defendant did not rely upon legal advice from any attorney and is not entitled to any other exemption or mitigation authorized by law.
4. The Plaintiff is entitled to recover the reasonable attorney fees actually incurred in this successful litigation in the amount of \$32,287.69.
5. These fees should be a charge upon the operating expenses of the Sheriff's Department of Columbus County as provided in GS 132.9(c).

IT IS THEREFFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs shall have and recover from the Defendant in his official capacity attorney fees in the amount of \$ 32,287.69, which sum shall be a charge upon the operating expenses of the office of the Sheriff of Columbus County.

This the 2 day of March 2021.

A handwritten signature in black ink, appearing to be 'J. W. Smith', written over a horizontal line.

John W. Smith
Superior Court Judge