

1 MATTHEW Z. CROTTY  
2 Crotty & Son Law Firm, PLLC  
3 421 West Riverside, Suite 1005  
4 Spokane, WA 99201-0300  
5 Telephone: 509.850.7011  
6 Facsimile: 509.703.7957

7 THOMAS G. JARRARD, *admission pending*  
8 The Law Office of Thomas G. Jarrard, PLLC  
9 1020 N. Washington  
10 Spokane, WA 99201  
11 Telephone: 425.239.7290

12 Attorneys for Plaintiff

13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE WESTERN DISTRICT OF WASHINGTON**

15 CRAIG D. HANSON

16 **NO. CV 3:13-5388**

17 Plaintiff,

18 PLAINTIFF'S MOTION, BRIEF,  
19 AND PROPOSED ORDER FOR  
20 LEAVE TO PROCEED AS  
21 VETERAN WITHOUT FILING  
22 FEE, COSTS OR SECURITY

23 v.

24 COUNTY OF KITSAP,  
25 WASHINGTON; and DAVID  
LYNAM, KITSAP COUNTY FIRE  
MARSHAL; and, JOHN AND JANE  
DOE, EMPLOYEE-AGENTS AND  
FORMER EMPLOYEE-AGENTS  
OF KITSAP COUNTY

NOTE ON MOTION CALENDAR:  
Same Day - Per LCR 7(d)(1).

Defendants.

26 **COMES NOW** Plaintiff CRAIG HANSON (Mr. Hanson) by and through  
27 his attorney and moves this Court to grant leave to proceed as a veteran under the

1 Uniformed Services Employment and Reemployment Rights Act, (“USERRA”),  
2 38 U.S.C. § 4323(h)(1) and LCR3 (b)<sup>1</sup> for leave to commence his civil action and  
3 to file any petition or motion without being required to prepay fees and costs or  
4 give security for them. As supported by the certification of counsel in the  
5 complaint, Plaintiff states as follows:  
6

7 **A. No fees or court costs may be charged or taxed against an individual if**  
8 **he or she is claiming rights under USERRA.**

9 Congress passed USERRA (the "Act") in 1994 to encourage non-career  
10 service in the Uniformed Services by, *inter alia*, prohibiting discrimination against  
11 persons on the basis of membership in the armed forces. *Townsend v. University*  
12 *of Alaska*, 543 F. 3d 478 (9th Cir. 2008). Under the Act,  
13

14 A person who is a member of, applies to be a member of,  
15 performs, has performed, applies to perform, or has an  
16 obligation to perform service in a uniformed service shall  
17 not be denied initial employment, reemployment,  
18 retention in employment, promotion, or any benefit of  
19 employment by an employer on the basis of that  
20 membership, application for membership, performance of  
21 service, application for service, or obligation.

---

22 <sup>1</sup> LCR3(b) allows a party to petition to not pay court costs "under 28 U.S.C. § 1915  
23 **or other applicable acts of Congress.**" (emphasis added). The "other applicable  
24 act[] of Congress" in this case is 38 U.S.C. § 4323(h). LCR 3(b)(1) requires  
25 parties to complete "the in forma pauperis application approved for use in this  
district for the specific type of case". LCR3(b)(1). Since Mr. Hanson seeks a fee  
waiver under USERRA, as opposed to 28 U.S.C. § 1915, no *in forma paperis* form  
is supplied.

1 38 U.S.C. § 4311(a). Section 4323 provides: “[N]o fees or court costs may be  
2 charged or taxed against any person claiming rights under [USERRA].” 38 U.S.C.  
3 § 4323(h)(1); *see also* 20 C.F.R. § 1009.310. The Department of Labor is in  
4 accord:

5  
6 No fees or court costs may be charged or taxed against an  
7 individual if he or she is claiming rights under the Act  
8 [38 U.S.C. § 4301, et seq.] If the individual obtains  
9 private counsel for any action or proceeding to enforce a  
10 provision of the Act, [38 U.S.C. § 4301, et seq.], and  
11 prevails, the court may award reasonable attorney fees,  
12 expert witness fees, and other litigation expenses. *See* 20  
13 C.F.R. § 1002.310; Federal Register, Vol. 70, o.  
14 242/Monday, December 19, 2005/Rules and Regulations;  
15 38 U.S.C. § 4323(h)(1).

16 Furthermore, courts addressing this issue are unanimous: "USERRA  
17 provides that '[n]o fees or court costs may be charged or taxed against any person  
18 claiming rights under this chapter.'" *Davis v. Advocate Health Ctr. Patient Care*  
19 *Exp.*, 523 F.3d 681, 684 (7th Cir. 2008); *Newman v. IntelCorp.*, 2012 U.S. Dist.  
20 LEXIS 148866 (E.D. Cal. Oct. 12, 2012) *See also Baney v. DOJ*, 2013 U.S. App.  
21 LEXIS 9255 (Fed. Cir. May 7, 2013); *Thorson v. County of Klickitat*, 2010 U.S.  
22 Dist. LEXIS 135630 (E.D. Wash. Dec. 3, 2010); *Worcester v. County of Spokane*,  
23 2010 U.S. Dist. LEXIS 82881 (E.D. Wash. Aug. 10, 2010); *Seeton v. Thermadyne*  
24 *Holdings Corp.*, 2009 U.S. Dist. LEXIS 31979 (E.D. Tex. Apr. 15, 2009). To  
25 proceed without a filing fee litigants need only give the court notice establishing  
their right to file with veteran status. *Davis*, 523 F.3d at 684.

**B. Since Mr. Hanson it entitled to the protections of USERRA costs should not be taxed against him.**

Mr. Hanson is the sole Plaintiff in this action. (Complaint, at 1) Mr. Hanson is a veteran of the United States Armed Forces, and the character of his service, as determined by the United States Army, was honorable. *Id.* ¶ 2.2. Mr. Hanson filed his civil complaint in this court pursuant to the USERRA. *Id.* ¶¶1.6, 3.2-3.9. Thus, under § 4323(h) no filing fee is required, and Mr. Hanson may properly proceed with his case without fees or costs charged to him.<sup>2</sup>

WHEREFORE, the Plaintiff prays that this Court grant him leave to proceed as a veteran under the USERRA without a filing fee, or security required under the local rules.

DATED this 22nd day of May 2013.

*/s Matthew Crotty*  
MATTHEW Z. CROTTY  
Crotty & Son Law Firm, PLLC  
421 West Riverside, Suite 1005  
Spokane, WA 99201  
Telephone: 509.850.7011

---

<sup>2</sup> Mr. Hanson is represented by two solo-practitioner attorneys (who are also veterans) in this case. Attorney Thomas Jarrard, who litigates USERRA cases nation-wide, is not admitted to practice in the Western District of Washington. Mr. Jarrard has paid the \$226.00 admission fee and has submitted the requisite application. Since the admission fee is a "court cost", Mr. Hanson respectfully requests that the \$226.00 admission cost also be waived under § 4323(h).

/s Thomas G. Jarrard  
THOMAS G. JARRARD, *admission pending*  
The Law Office of Thomas G. Jarrard, PLLC  
1020 N. Washington  
Spokane, WA 99201  
425-239-7290

Attorneys for Plaintiff

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25