

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

LARRY E. ENGLISH)
Appellant,)
)
v.) CAVC No. 17-2083
) EAJA
)
ROBERT L. WILKIE,)
SECRETARY OF)
VETERANS AFFAIRS,)
Appellee)

APPELLANT'S APPLICATION FOR AN
AWARD OF ATTORNEYS FEES AND EXPENSES
PURSUANT TO 28 U.S.C. 2412(d)

Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), and the Court's Rule 39, Appellant, through counsel, seeks a total fee in the amount of **\$9,050.94**.

The basis for the application is as follows:

Grounds for an Award

This Court has identified four elements as being necessary to warrant an award by the Court of attorneys' fees and expenses to an eligible party pursuant to the EAJA. These are: (1) a showing that the appellant is a prevailing party; (2) a showing that the appellant is eligible for an award; (3) an allegation that the government's position is not substantially justified; and (4) an itemized statement

of the fees sought. *Owens v. Brown*, 10 Vet. App. 65, 66 (1997) (quoting *Bazalo*, 9 Vet. App. at 308). See also 28 U.S.C. §§ 2412(d)(1)(A),(B).

As will be demonstrated below, Appellant satisfies each of the above-enumerated requirements for EAJA.

1. THE APPELLANT SATISFIES EACH OF THE REQUIREMENTS FOR AN AWARD OF ATTORNEY'S FEES AND EXPENSES

A. *The Appellant Is a Prevailing Party*

In *Buckhannon Bd. and Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598, 121 S.Ct 1835 (2001) (hereafter "Buckhannon"), the Supreme Court explained that in order to be a prevailing party the applicant must receive "at least some relief on the merits" and the relief must materially alter the legal relationship of the parties. 532 U.S. at 603-605. The Federal Circuit adopted the *Buckhannon* test in *Brickwood Contractors, Inc. v. United States*, 288 F.3d 1371 (Fed. Cir. 2002) and applied it to an EAJA applicant. The Federal Circuit explained in *Rice Services, LTD. v. United States*, that "in order to demonstrate that it is a prevailing party, an EAJA applicant must show that it obtained an enforceable judgment on the merits or a court ordered consent decree that materially altered the legal relationship between the parties, or the equivalent of either of those." 405 F.3d 1017, 1025 (Fed. Cir. 2005).

In *Zuberi v. Nicholson*, 19 Vet. App. 541 (2006), this Court explained that the Federal Circuit case of *Akers v. Nicholson*, 409 F.3d 1356 (Fed. Cir. 2005) "did not change the focus for determining prevailing party status from a standard that looks to the basis for the remand to one that looks to the outcome of the remand. *Akers* simply did not involve a remand that was predicated on an administrative error." 19 Vet. App. at 547. (internal quotations omitted). The Court held in *Zuberi* that *Motorola* provided the proper test for prevailing party. *Id.* Next in *Kelly v. Nicholson*, 463 F.3d 1349 (Fed. Cir. 2006), the Federal Circuit held that:

To be considered a prevailing party entitled to fees under EAJA, one must secure some relief on the merits. Securing a remand to an agency can constitute the requisite success on the merits. [W]here the plaintiff secures a remand requiring further agency proceedings because of alleged error by the agency, the plaintiff qualifies as a prevailing party ... without regard to the outcome of the agency proceedings where there has been no retention of jurisdiction by the court.

Id. at 1353 (internal citations and quotations omitted).

Most recently, this Court in *Blue v. Wilkie*, 30 Vet.App. 61 (2018), laid out the following three-part test relating to when an appellant is considered a prevailing party under the EAJA:

An appellant who secures a remand to an administrative agency is a prevailing party under the EAJA if (1) the remand was necessitated by or predicated upon administrative error, (2) the remanding court did not retain jurisdiction, and (3) the language in the remand order clearly called for further agency proceedings, which leaves the possibility of attaining a favorable merits determination.

Id. at 67, citing *Dover v. McDonald*, 818 F.3d 1316 (Fed. Cir. 2016).

In a Precedential Decision, the Court set aside and remanded the Board's May 17, 2017 decision denying a higher initial rating for patellofemoral syndrome of the right knee for the period from January 15, 2008 until April 14, 2010 based upon the Board's failure to provide an adequate statement of reasons or bases. See pages 1-9 of the Decision. The mandate was issued on January 29, 2019. Based upon the foregoing, and because the three-part test promulgated in *Blue* is satisfied, Appellant is a prevailing party.

B. Appellant Is Eligible For An EAJA Award

Appellant also satisfies the EAJA requirement that his net worth at the time his appeal was filed did not exceed \$2,000,000. 28 U.S.C. § 2412(d)(2)(B). Mr. English had a net worth under \$2,000,000 on the date this action was commenced. See Paragraph 3 of the fee agreement filed with the Court. Therefore, Mr. English is a person eligible to receive an award under the EAJA.

C. The Position of the Secretary Was Not Substantially Justified

In *White v. Nicholson*, 412 F.3d 1314 (Fed. Cir. 2004) the Federal Circuit applied the totality of the circumstances test and noted that "EAJA requires that the record must supply the evidence of the Government's substantial justification." 412 F.3d at 1316. The Secretary's position during proceedings before the Agency and

in Court was not reasonable, either in law or in fact, and accordingly the Secretary's position was not substantially justified at either the administrative or litigation stage in this case. There thus is nothing substantially justified in the Board's failure to provide an adequate statement of reasons or bases. Moreover, there is no evidence that special circumstances exist in Appellant's case that would make an award of reasonable fees and expenses unjust. 28 U.S.C. § 2412(d)(1)(A).

2. ITEMIZED STATEMENT OF SERVICES RENDERED AND AMOUNTS OF REASONABLE FEES AND EXPENSES

Appellant has claimed a reasonable amount of attorneys' fees, predicated upon "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Ussery v. Brown*, 10 Vet. App. 51, 53 (1997) (quoting *Elczyn*, 7 Vet. App. at 176-177).

Nine attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Layi Oduyingbo, Danielle M. Gorini, April Donahower, Lindy Nash, Jenna Zellmer, Nicholas Phinney, Alyse Galoski, Andrew Blais, and Zachary Stolz.¹ Attorney Layi Oduyingbo graduated from Roger Williams

¹“There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the

University Law School in 2014 and the *Laffey Matrix* establishes that \$351.00 is the prevailing market rate for an attorney with his experience.² Danielle Gorini

same work and are being compensated for the distinct contribution of each lawyer.” *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1301 (11th Cir. 1988); *see also Baldridge v. Nicholson*, 19 Vet.App. 227, 237-38 (2005)(“the fees sought must be ‘based on the distinct contribution of each individual counsel.’”). “The use in involved litigation of a team of attorneys who divide up the work is common today for both plaintiff and defense work.” *Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) *holding modified by Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). “Careful preparation often requires collaboration and rehearsal[.]” *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998). As demonstrated in Exhibit A, each attorney involved in the present case provided a distinct, and non-duplicative contribution to the success of the appeal. *See Baldridge*, 19 Vet.App. at 237 (“An application for fees under EAJA where multiple attorneys are involved must also explain the role of each lawyer in the litigation and the tasks assigned to each, thereby describing the distinct contribution of each counsel.”). The Exhibit A in this case is separated into two documents as our firm is transitioning to a new time keeping program beginning October 1, 2018.

²The U.S. Attorney’s Office maintains a matrix, known as the Laffey Matrix, of prevailing market rates for attorneys by years of practice, taking into account annual price increases, pursuant to *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff’d in part by* 746 F.2d.4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021, 105 S. Ct. 3488 (1985). This Court has approved the use of the Laffey Matrix for determining the prevailing market rate for EAJA fees. *See, e.g., Wilson v. Principi*, 16 Vet. App. 509, 213 (2002) (finding the Laffey Matrix a “reliable indicator of fees...particularly as to cases involving fees to be paid by government entities or determined under fee-shifting statutes”), *vacated on other grounds by* 391 F.3d 1203 (Fed. Cir. 2004); *see also Sandoval*, 9 Vet. App. at 181 (using the Laffey Matrix as an indicator of prevailing market rate and holding that once a prevailing market rate is established, the government has the burden of producing evidence to show that the rate is erroneous.) *See Exhibit B (Laffey Matrix).*

graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$491.00 is the prevailing market rate for an attorney with her experience. April Donahower graduated from Temple University Law School in 2013 and the *Laffey* Matrix establishes that \$358.00 is the prevailing market rate for an attorney with her experience. Lindy Nash graduated from Suffolk University Law School in 2015 and the *Laffey* Matrix establishes that \$351.00 is the prevailing market rate for an attorney with her experience. Jenna Zellmer graduated from Boston University Law School in 2013 and the *Laffey* Matrix establishes that \$358.00 is the prevailing market rate for an attorney with her experience. Nicholas Phinney graduated from Roger Williams University Law School in 2007 and the *Laffey* Matrix establishes that \$491.00 is the prevailing market rate for an attorney with his experience. Alyse Galoski graduated from Roger Williams University Law School in 2014 and the *Laffey* Matrix establishes that \$351.00 is the prevailing market rate for an attorney with her experience. Andrew Blais graduated from Roger Williams University Law School in 2016 and the *Laffey* Matrix establishes that \$340.00 is the prevailing market rate for an attorney with his experience. Zachary Stolz graduated from the University of Kansas School of Law in 2005 and the *Laffey* Matrix establishes that \$491.00 is the prevailing market rate for an attorney with his experience.

Elizabeth Rowland is a 2014 graduate from Vassar College and began working as a paralegal for Chisholm Chisholm & Kilpatrick in November 2016. Ms. Rowland was admitted to practice as a non attorney practitioner on January 16, 2018. In *McDonald v. Nicholson*, 21 Vet.App. 257 (2007), this Court indicated that non attorney practitioners are entitled to an EAJA award at a lesser rate than the \$125.00 per hour statutory rate for attorneys, plus the cost of living adjustment.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$200.12 per hour for Mr. Oduyingbo, Ms. Gorini, Ms. Donahower, Ms. Nash, Ms. Zellmer, Mr. Phinney, Ms. Galoski, Mr. Blais, and Mr. Stolz for representation services before the Court.³ This rate per hour, multiplied by the number of hours billed for these nine attorneys (44.90) results in a total attorney's fee amount of \$8,985.34.

Appellant seeks attorney's fees at the rate of \$164.00 per hour for Ms. Rowland's representation services before the Court. This rate per hour, multiplied

³This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. See *Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to November 2017 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181.

by the number of hours billed for Ms. Rowland (0.40) results in a total attorney's fee amount of \$65.60.

Based upon the foregoing, the total fee sought is **\$9,050.94.**

I, Zachary M. Stolz, am the lead counsel in this case. I certify that I have reviewed the combined billing statement and am satisfied that it accurately reflects the work performed by all representatives. I have considered and eliminated all time that I believe, based upon my over ten years of practicing before this Court, is either excessive or redundant.

Respectfully submitted,
Larry E. English
By His Attorneys,
CHISHOLM CHISHOLM & KILPATRICK
/s/Zachary M. Stolz
One Turks Head Place, Ste. 1100
Providence, Rhode Island 02903
(401) 331-6300
Fax: (401) 421-3185

Exhibit A

		<u>Hours</u>
5/26/2017 AG	Review Board decision. Make recommendation for appeal.	0.30
7/7/2017 DMG	Reviewed file and appeal documents. Filed Notice of Appeal, Notice of Appearance for Zachary Stolz as lead counsel, Fee Agreement, and Declaration of Financial Hardship with the Court. Received, reviewed, and saved Court confirmation email to the file. Updated case file.	0.20
7/7/2017 DMG	Reviewed emails from Court with docketed appeal documents. Posted emails to the file. Checked Court docket sheet to ensure Notice of Appeal, Notice of Appearance for Zachary Stolz as lead counsel, Fee Agreement, and Declaration of Financial Hardship were properly docketed. Updated case information and case file.	0.20
7/12/2017 OO	Prepared and e-filed entry of appearance. Updated file.	0.10
7/12/2017 LN	prepared and efiled notice of appearance, reviewed docket for procedural status, updated case file	0.20
7/19/2017 LN	received and reviewed BVA decision transmittal and decision, updated clients file	0.10
8/30/2017 LN	received and reviewed Secretary's notice of appearance, updated clients file	0.10
8/31/2017 LN	received and reviewed RBA notice, updated clients file	0.10
9/7/2017 NP	Reviewed RBA to determine need for dispute	2.20

Exhibit A

		<u>Hours</u>
9/8/2017 AB	Prepared and filed notice of appearance. Updated client file. Updated case information and case file.	0.10
9/15/2017 AB	Review record and case map pgs. 1 - 484 in preparation of drafting PBC memo.	1.30
9/15/2017 AB	Review record and case map pgs. 485 - end.	1.30
9/19/2017 AB	Legal research regarding relevant Diagnostic Code in preparation of drafting PBC Memorandum.	0.80
9/19/2017 AB	Began drafting PBC memorandum.	1.20
9/20/2017 AB	Compose status letter to Veteran.	0.10
9/20/2017 AB	Receive and review 60-day briefing order from Court. Calculate brief due date. Update file to reflect new deadlines.	0.10
9/20/2017 OO	Reviewed casemap of RBA and PBC memo - suggested additional Stegall argument to be made in PBC memo in light of prior JMR. Prepared memo to file regarding arguments to be made.	0.40
9/20/2017 AB	Complete drafting PBC Memorandum.	0.80
9/21/2017 AB	Edit PBC Memorandum Draft.	0.50
9/21/2017 AB	Added argument to PBC memorandum.	1.20
9/28/2017 AB	Made final edits to PBC memorandum and sent same to OGC and CLS. Prepared and filed Rule 33 certificate of service	0.40
10/3/2017 AB	Receive and Review PBC Order. Calculate memo due date. Update file accordingly.	0.10

Exhibit A

		<u>Hours</u>
10/3/2017 AB	Finalize PBC Memorandum, Email PBC memorandum to VA and CLS, Prepare and File Rule 33 Service Certification.	0.40
10/13/2017 AB	Spoke with client on phone regarding case. Updated file.	0.20
10/31/2017 AB	Prepare for PBC. Review Memorandum and BVA decision. Prepare, in part, the post-PBC note for file. Participate in PBC. Complete post-PBC note and update file. Left voice mail for client and made note to the file.	1.30
11/1/2017 AB	Called Veteran - left voice mail re: case status. Made a note to the file .	0.10
11/1/2017 AB	Veteran returned call re: case status. Note to the file.	0.20
11/17/2017 AB	Began drafting opening brief - statement of the case	2.20
11/20/2017 AB	Complete draft of argument section and draft remaining sections of brief	1.40
11/20/2017 AB	Continue drafting Opening Brief - Argument Section - reasons and bases	2.50
11/24/2017 OO	Reviewed first 10 pages of Andrew's opening brief and suggested edits to same.	1.20
11/24/2017 OO	Finished reviewing pages 10 to 20 of Andrew's opening brief and suggested revisions.	1.40
11/27/2017 AB	Begin implementing edits to opening brief	0.40
11/28/2017 AB	Continued editing Opening Brief - statement of the case.	1.50

Exhibit A

		<u>Hours</u>
11/28/2017 AB	Made additional edits to Opening Brief.	1.50
11/30/2017 AB	Made final revisions to brief, checked citations to record and authority, and e-filed.	1.30
1/29/2018 AB	Receive and review Appellee's Motion to Extend time for Brief and Court's stamp order granting motion. Update file accordingly.	0.10
3/15/2018 AB	Receive and review notice with Appellee's Brief. Update file accordingly.	0.10
3/16/2018 AB	Speak to client on the phone. Update file accordingly.	0.20
3/21/2018 AD	Prepared and efiled notice of appearance; updated client file	0.10
5/8/2018 AB	Outlining arguments for Reply Brief.	1.80
5/9/2018 AB	Continue drafting Reply Brief.	2.70
5/9/2018 AB	Begin drafting Reply Brief.	3.00
5/11/2018 JZ	Reviewed Andrew's draft reply, Aee brief and opening brief. Suggested edits to first argument and drafted second.	1.50
5/14/2018 ER	Reviewed Reply Brief for proofreading purposes and corrected typos and grammatical errors	0.40
5/14/2018 JZ	Researched Sharp and drafted conclusion for reply.	1.10
5/14/2018 JZ	Reviewed proofreading edits, finalized reply brief. Drafted and filed notice of appearance. Filed reply brief, updated client file and calendar.	1.20

Exhibit A

		<u>Hours</u>
5/24/2018 JZ	Reviewed CAVC email re: ROP filed. Reviewed ROP and compared to record citations in pleadings. Emailed OGC re one page scanned upside down.	0.20
5/29/2018 JZ	Reviewed email from OGC re: ROP issues. Drafted and filed ROP response.	0.20
5/31/2018 JZ	Reviewed CAVC email re: judge assigned, updated client file and calendar.	0.10
6/11/2018 JZ	Reviewed CAVC email re: panel order. Updated client file and calendar.	0.30
7/17/2018 JZ	Spoke to client re: status of both claims, explained waiting on oral argument and mem dec. Note to file on conversation.	0.20
9/7/2018 JZ	Spoke to client re: case called to panel and possible timing, note to file on conversation.	0.20
	<u>40.80</u>	<u>Amount</u> \$8,150.40
	<u>40.80</u>	<u>Amount</u> \$8,150.40

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Alyse Galoski	0.30	200.12	\$60.04
Andrew Blais	28.80	200.12	\$5,763.45
April Donahower	0.10	200.12	\$20.01
Danielle M. Gorini	0.40	200.12	\$80.04
Elizabeth Rowland	0.40	164.00	\$65.60
Jenna Zellmer	5.00	200.12	\$1,000.58
Layi Oduyingbo	3.10	200.12	\$620.37
Lindy Nash	0.50	200.12	\$100.05

Exhibit A

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Nicholas Phinney	2.20	200.12	\$440.26

Exhibit A

Time from 10/1/2018 to 2/7/2019

Case No. 251036

Client: English, Mr. Larry E.

			<u>Hours</u>
11/1/2018	JENNA	Reviewed precedential decision, compared to issues argued in the pleadings. Updated client file re: outcome.	0.60
11/1/2018	ZACH	Reviewed Court's precedent decision, pleadings, and notes in case. Prepared letter to client concerning Court's decision. Ensured case file was updated with necessary letters, pleadings, and correspondence so that client could be properly informed of case progress, disposition, and next steps.	0.80
11/13/2018	JENNA	Spoke to client re: precedential decision, note to file on conversation.	0.30
11/28/2018	JENNA	Reviewed CAVC email re: judgment entered. Reviewed document to ensure accuracy. Updated client file and calendar.	0.10
12/14/2018	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
12/27/2018	APRIL	Received phone call from client; provided status update; update client file	0.20
1/22/2019	JENNA	Spoke to client re: status and mandate entering shortly. Note to file on conversation.	0.30
1/29/2019	JENNA	Reviewed CAVC email re: mandate entered, updated client file and calendar.	0.10
2/7/2019	DANIELLE	Prepared and e filed Notice of Appearance. Received, reviewed, and saved Court confirmation email. Checked docket sheet to ensure proper filing. Updated case file.	0.20
2/7/2019	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review	1.10
2/7/2019	ZACH	Reviewed EAJA Application for proofreading purposes and to ensure billing accuracy.	0.50

Timekeeper Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
APRIL	0.20	\$ 200.12	\$ 40.02
DANIELLE	1.30	\$ 200.12	\$ 260.16
JENNA	1.40	\$ 200.12	\$ 280.17
ZACH	1.60	\$ 200.12	\$ 320.19
Totals:	4.50		\$ 900.54

USAO ATTORNEY'S FEES MATRIX — 2015-2019

Revised Methodology starting with 2015-2016 Year

Years (Hourly Rate for June 1 – May 31, based on change in PPI-OL since January 2011)

Experience	2015-16	2016-17	2017-18	2018-19
31+ years	568	581	602	613
21-30 years	530	543	563	572
16-20 years	504	516	536	544
11-15 years	455	465	483	491
8-10 years	386	395	410	417
6-7 years	332	339	352	358
4-5 years	325	332	346	351
2-3 years	315	322	334	340
Less than 2 years	284	291	302	307
Paralegals & Law Clerks	154	157	164	166

Explanatory Notes

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia (USAO) to evaluate requests for attorney's fees in civil cases in District of Columbia courts. The matrix is intended for use in cases in which a fee-shifting statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, or by other Department of Justice components, or in other kinds of cases. The matrix does not apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. A "reasonable fee" is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. *See, e.g., Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Consistent with that definition, the hourly rates in the above matrix were calculated from average hourly rates reported in 2011 survey data for the D.C. metropolitan area, which rates were adjusted for inflation with the Producer Price Index-Office of Lawyers (PPI-OL) index. The survey data comes from ALM Legal Intelligence's 2010 & 2011 Survey of Law Firm Economics. The PPI-OL index is available at <http://www.bls.gov/ppi>. On that page, under "PPI Databases," and "Industry Data (Producer Price Index - PPI)," select either "one screen" or "multi-screen" and in the resulting window use "industry code" 541110 for "Offices of Lawyers" and "product code" 541110541110 for "Offices of Lawyers." The average hourly rates from the 2011 survey data are multiplied by the PPI-OL index for May in the year of the update, divided by 176.6, which is the PPI-OL index for January 2011, the month of the survey data, and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
3. The PPI-OL index has been adopted as the inflator for hourly rates because it better reflects the mix of legal services that law firms collectively offer, as opposed to the legal services that typical consumers use, which is what the CPI-

Legal Services index measures. Although it is a national index, and not a local one, *cf. Eley v. District of Columbia*, 793 F.3d 97, 102 (D.C. Cir. 2015) (noting criticism of national inflation index), the PPI-OL index has historically been generous relative to other possibly applicable inflation indexes, and so its use should minimize disputes about whether the inflator is sufficient.

4. The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed in *Laffey v. Northwest Airlines, Inc.* 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore (DC-MD-VA-WV) area. Because the USAO rates for the years 2014-15 and earlier have been generally accepted as reasonable by courts in the District of Columbia, *see* note 9 below, the USAO rates for those years will remain the same as previously published on the USAO's public website. That is, the USAO rates for years prior to and including 2014-15 remain based on the prior methodology, *i.e.*, the original *Laffey* Matrix updated by the CPI-U for the Washington-Baltimore area. *See Citizens for Responsibility & Ethics in Washington v. Dep't of Justice*, 142 F. Supp. 3d 1 (D.D.C. 2015) and Declaration of Dr. Laura A. Malowane filed therein on Sept. 22, 2015 (Civ. Action No. 12-1491, ECF No. 46-1) (confirming that the USAO rates for 2014-15 computed using prior methodology are reasonable).
 5. Although the USAO will not issue recalculated *Laffey* Matrices for past years using the new methodology, it will not oppose the use of that methodology (if properly applied) to calculate reasonable attorney's fees under applicable fee-shifting statutes for periods prior to June 2015, provided that methodology is used consistently to calculate the entire fee amount. Similarly, although the USAO will no longer issue an updated *Laffey* Matrix computed using the prior methodology, it will not oppose the use of the prior methodology (if properly applied) to calculate reasonable attorney's fees under applicable fee-shifting statutes for periods after May 2015, provided that methodology is used consistently to calculate the entire fee amount.
 6. The various "brackets" in the column headed "Experience" refer to the attorney's years of experience practicing law. Normally, an attorney's experience will be calculated starting from the attorney's graduation from law school. Thus, the "Less than 2 years" bracket is generally applicable to attorneys in their first and second years after graduation from law school, and the "2-3 years" bracket generally becomes applicable on the second anniversary of the attorney's graduation (*i.e.*, at the beginning of the third year following law school). *See Laffey*, 572 F. Supp. at 371. An adjustment may be necessary, however, if the attorney's admission to the bar was significantly delayed or the attorney did not otherwise follow a typical career progression. *See, e.g., EPIC v. Dep't of Homeland Sec.*, 999 F. Supp. 2d 61, 70-71 (D.D.C. 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate); *EPIC v. Dep't of Homeland Sec.*, 982 F. Supp. 2d 56, 60-61 (D.D.C. 2013) (same). The various experience levels were selected by relying on the levels in the ALM Legal Intelligence 2011 survey data. Although finer gradations in experience level might yield different estimates of market rates, it is important to have statistically sufficient sample sizes for each experience level. The experience categories in the current USAO Matrix are based on statistically significant sample sizes for each experience level.
 7. ALM Legal Intelligence's 2011 survey data does not include rates for paralegals and law clerks. Unless and until reliable survey data about actual paralegal/law clerk rates in the D.C. metropolitan area become available, the USAO will compute the hourly rate for Paralegals & Law Clerks using the most recent historical rate from the USAO's former *Laffey* Matrix (*i.e.*, \$150 for 2014-15) updated with the PPI-OL index. The formula is \$150 multiplied by the PPI-OL index for May in the year of the update, divided by 194.3 (the PPI-OL index for May 2014), and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
 8. The USAO anticipates periodically revising the above matrix if more recent reliable survey data becomes available, especially data specific to the D.C. market, and in the interim years updating the most recent survey data with the PPI-OL index, or a comparable index for the District of Columbia if such a locality-specific index becomes available.
 9. Use of an updated *Laffey* Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the USAO as evidence of prevailing market rates for litigation counsel in the Washington, D.C. area. *See Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n.14, 1109 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996). Most lower federal courts in the District of Columbia
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have relied on the USAO's *Laffey* Matrix, rather than the so-called "*Salazar* Matrix" (also known as the "LSI Matrix" or the "Enhanced *Laffey* Matrix"), as the "benchmark for reasonable fees" in this jurisdiction. *Miller v. Holzmann*, 575 F. Supp. 2d 2, 18 n.29 (D.D.C. 2008) (quoting *Pleasants v. Ridge*, 424 F. Supp. 2d 67, 71 n.2 (D.D.C. 2006)); see, e.g., *Joaquin v. Friendship Pub. Charter Sch.*, 188 F. Supp. 3d 1 (D.D.C. 2016); *Prunty v. Vivendi*, 195 F. Supp. 3d 107 (D.D.C. 2016); *CREW v. U.S. Dep't of Justice*, 142 F. Supp. 3d 1 (D.D.C. 2015); *McAllister v. District of Columbia*, 21 F. Supp. 3d 94 (D.D.C. 2014); *Embassy of Fed. Republic of Nigeria v. Ugwuonye*, 297 F.R.D. 4, 15 (D.D.C. 2013); *Berke v. Bureau of Prisons*, 942 F. Supp. 2d 71, 77 (D.D.C. 2013); *Fisher v. Friendship Pub. Charter Sch.*, 880 F. Supp. 2d 149, 154-55 (D.D.C. 2012); *Sykes v. District of Columbia*, 870 F. Supp. 2d 86, 93-96 (D.D.C. 2012); *Heller v. District of Columbia*, 832 F. Supp. 2d 32, 40-49 (D.D.C. 2011); *Hayes v. D.C. Public Schools*, 815 F. Supp. 2d 134, 142-43 (D.D.C. 2011); *Queen Anne's Conservation Ass'n v. Dep't of State*, 800 F. Supp. 2d 195, 200-01 (D.D.C. 2011); *Woodland v. Viacom, Inc.*, 255 F.R.D. 278, 279-80 (D.D.C. 2008); *American Lands Alliance v. Norton*, 525 F. Supp. 2d 135, 148-50 (D.D.C. 2007). But see, e.g., *Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 13-15 (D.D.C. 2000). Since initial publication of the instant USAO Matrix in 2015, numerous courts similarly have employed the USAO Matrix rather than the *Salazar* Matrix for fees incurred since 2015. E.g., *Electronic Privacy Information Center v. United States Drug Enforcement Agency*, 266 F. Supp. 3d 162, 171 (D.D.C. 2017) ("After examining the case law and the supporting evidence offered by both parties, the Court is persuaded that the updated USAO matrix, which covers billing rates from 2015 to 2017, is the most suitable choice here.") (requiring recalculation of fees that applicant had computed according to *Salazar* Matrix); *Clemente v. FBI*, No. 08-1252 (BJR) (D.D.C. Mar. 24, 2017), 2017 WL 3669617, at *5 (applying USAO Matrix, as it is "based on much more current data than the *Salazar* Matrix"); *Gatore v. United States Dep't of Homeland Security*, 286 F. Supp. 3d 25, 37 (D.D.C. 2017) (although plaintiff had submitted a "great deal of evidence regarding [the] prevailing market rates for complex federal litigation' to demonstrate that its requested [*Salazar*] rates are entitled to a presumption of reasonableness, . . . the Court nonetheless concludes that the defendant has rebutted that presumption and shown that the current USAO Matrix is the more accurate matrix for estimating the prevailing rates for complex federal litigation in this District"); *DL v. District of Columbia*, 267 F. Supp. 3d 55, 70 (D.D.C. 2017) ("the USAO Matrix ha[s] more indicia of reliability and more accurately represents prevailing market rates" than the *Salazar* Matrix). The USAO contends that the *Salazar* Matrix is fundamentally flawed, does not use the *Salazar* Matrix to determine whether fee awards under fee-shifting statutes are reasonable, and will not consent to pay hourly rates calculated with the methodology on which that matrix is based. The United States recently submitted an appellate brief that further explains the reliability of the USAO Matrix vis-à-vis the *Salazar* matrix. See Br. for the United States as *Amicus Curiae* Supporting Appellees, *DL v. District of Columbia*, No. 18-7004 (D.C. Cir. filed July 20, 2018).