

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

PATRICIA L. ROMERO )  
Appellant, )  
 )  
v. ) CAVC No. 19-3687  
 ) EAJA  
 )  
DENIS MCDONOUGH, )  
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 **\$32,810.27**.

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 9, 2019 decision based upon the Board's error when it decided Appellant did not rebut the presumption of regularity. See pages 1-21 of the Decision.

Mandate issued on April 20, 2021. 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 her net worth at the time her appeal was filed did not exceed \$2,000,000. 28 U.S.C. § 2412(d)(2)(B). Ms. Romero 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, Ms. Romero 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 or the 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. The Board's erred when it decided Appellant did not rebut the presumption of regularity. 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).

Five attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Bradley Hennings, Danielle M. Gorini, Alyse Phillips (Galoski), Barbara Cook, and Zachary Stolz.<sup>1</sup> Attorney Bradley Hennings

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

graduated from Rutgers University Law School in 2006 and the *Laffey* Matrix establishes that \$532.00 is the prevailing market rate for an attorney with his experience.<sup>2</sup> Danielle Gorini graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$591.00 is the prevailing market rate for an attorney with her experience. Alyse Phillips (Galoski) graduated from Roger Williams University Law School in 2014 and the *Laffey* Matrix establishes that \$388.00 is the prevailing market rate for an attorney with

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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 *Baldrige*, 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.

<sup>2</sup>The 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).

her experience. Barbara Cook graduated from University of Michigan Law School in 1977 and the *Laffey Matrix* establishes that \$665.00 is the prevailing market rate for an attorney with her experience. Zachary Stolz graduated from the University of Kansas School of Law in 2005 and the *Laffey Matrix* establishes that \$591.00 is the prevailing market rate for an attorney with his experience.

Cassie Scott is a paralegal for the law firm of Chisholm Chisholm & Kilpatrick who worked on this case. The Court has found that "the *Laffey Matrix* . . . is a reliable indicator of fees and is far more indicative of the prevailing market rate in the jurisdiction, particularly as to cases involving fees to be paid by government entities . . . ." *Wilson v. Principi*, 16 Vet.App. 509, 513 (2002). The U.S. Supreme Court in *Richlin Sec. Service Co. v. Chertoff*, 553 U.S. 571, 590 (2008), held "...that a prevailing party that satisfies EAJA other requirements may recover its paralegal fees from the Government at prevailing market rates." According to the *Laffey Matrix*, the prevailing market rate for paralegals from June 1, 2016 and after is \$180.00 per hour. Therefore, Appellant seeks fees at the rate of \$180.00 per hour for representation services before the Court for Ms. Scott's time as a paralegal.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$209.09 per hour for Mr.

Hennings, Ms. Gorini, Ms. Phillips (Galoski), and Mr. Stolz for representation services before the Court.<sup>3</sup> This rate per hour, multiplied by the number of hours billed for these four attorneys (139.40) results in a total attorney's fee amount of \$29,147.15.

Appellant seeks attorney's fees at the rate of \$201.51 per hour for Ms. Cook's representation services before the Court.<sup>4</sup> This rate per hour, multiplied by the number of hours billed for Ms. Cook (26.50) results in a total attorney's fee amount of \$5,340.02.

Appellant seeks attorney's fees at the rate of \$180.00 per hour for Ms. Scott's representation services before the Court. This rate per hour, multiplied by

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<sup>3</sup> This 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 January 2020 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).

<sup>4</sup> Per the agreement in *Bradley v. Wilkie*, 17-3797, this rate was determined using the formula proposed by the National Veterans Legal Services Program, Veterans Benefit Manual, [1683] (Barton Stichman et al. eds. 2017-18 ed.). Specifically, the hourly rate is determined using the \$193.83 hourly rate from the last month the Cincinnati Consumer Price Index-U was available in the second half of 2017, multiplying that number using the Midwest Consumer Price Index-U for the midpoint in the case, January 2020, divided by the data from the Midwest Consumer Price Index-U for December 2017 or 230.548.

the number of hours billed for Ms. Scott (2.30) results in a total attorney's fee amount of \$414.00.

Based upon the foregoing, the total fee amount is **\$34,901.17**. However, in the exercise of billing judgment, Appellant will voluntarily reduce the total fee amount by 10 hours for some time billed in preparation of the pleadings and preparation for oral argument and seek a reduced fee of **\$32,810.27**.

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,  
Patricia L. Romero  
By Her Attorneys,  
CHISHOLM CHISHOLM & KILPATRICK  
/s/Zachary M. Stolz  
321 S Main St #200  
Providence, Rhode Island 02903  
(401) 331-6300  
Fax: (401) 421-3185

# Exhibit A

Time from 10/1/2018 to 4/21/2021

Case No. 268281

Client: Romero, Ms. Patricia L.

			<u>Hours</u>
5/13/2019	BRADLEY	Review BVA decision. Conduct legal research. Recommend case for appeal.	0.40
6/7/2019	AGALOSKI	Prepared and e-filed notice of appearance, reviewed docket for procedural status, and updated case file.	0.20
7/2/2019	AGALOSKI	Received and reviewed email from Court with BVA decision transmittal document and copy of BVA decision. Reviewed documents for accuracy. Updated client file.	0.10
8/1/2019	AGALOSKI	Received and reviewed email from Court with VA counsel's appearance. Updated client file.	0.10
8/1/2019	AGALOSKI	Received and reviewed email from Court with RBA notice. Reviewed document for accuracy. Updated client file.	0.10
8/16/2019	CSCOTT	Reviewed RBA pgs 1-4079 for dispute purposes. Flagged records cited in BVA decision and SOC. Flagged claim stream.	2.30
8/21/2019	AGALOSKI	Prepared status letter for client regarding acceptance of RBA and explaining next steps of appeal. Updated client file.	0.10
8/23/2019	AGALOSKI	Received and reviewed email from Court with notice to file brief. Reviewed document for accuracy. Calculated deadline to file brief. Updated client file and calendar.	0.10
8/29/2019	AGALOSKI	Reviewed case notes, BVA decision, and Crumlich decision to prepare for case strategy meeting. Participated in case strategy meeting.	2.40
8/29/2019	AGALOSKI	Reviewed RBA pages 1-889 for briefing purposes.	1.40
9/11/2019	AGALOSKI	Reviewed RBA and casemapped pages 890-2400 for briefing purposes.	3.00
9/11/2019	AGALOSKI	Reviewed RBA and casemapped pages 2401-3000 for briefing purposes.	1.20
9/12/2019	AGALOSKI	Reviewed RBA pages 3001-3300 for briefing purposes.	0.50
9/24/2019	AGALOSKI	Received and reviewed email from Court with PBC order. Reviewed document for accuracy. Calculated deadlines to file PBC memo and opening brief. Updated client file and calendar.	0.10
10/23/2019	AGALOSKI	Finished drafting PBC memorandum. Submitted PBC memorandum to OGC and CLS. Prepared and e-filed Rule 33 certification of service. Updated client file. Prepared letter to client regarding PBC and PBC memorandum.	1.40
10/23/2019	AGALOSKI	Began drafting PBC memo.	2.10
10/23/2019	AGALOSKI	Reviewed RBA pages 3301-4079 for briefing purposes.	2.50
11/6/2019	AGALOSKI	Reviewed PBC memorandum to prepare for PBC. Participated in PBC. Posted detailed case strategy note to client's file.	0.30
11/12/2019	AGALOSKI	Posted case strategy note to file in preparation of case strategy meeting.	0.20
12/4/2019	AGALOSKI	Conducted legal research on pending potential class action case that might impact client's case.	0.70
12/4/2019	AGALOSKI	Conducted legal research on presumption of regularity and attended case strategy meeting.	2.00
12/4/2019	ZACH	Prepared for and participated in long discussion of briefing and litigation strategy. Conducted legal research concerning presumption of regularity.	2.30
1/3/2020	AGALOSKI	Conducted legal research on the presumption of regularity and when it attaches in preparation to outline legal arguments for opening brief	2.80
1/3/2020	AGALOSKI	Conducted further legal research on the presumption of regularity. Reviewed BVA decision and case file to identify legal errors and issues in case. Identified arguments to be briefed and posted briefing strategy note to file.	2.40
1/6/2020	AGALOSKI	Reviewed case strategy notes. Conducted further legal reasearch. Made additions to outline of opening brief arguments.	0.80
1/7/2020	AGALOSKI	Began drafting statement of the case for opening brief.	3.00
1/7/2020	AGALOSKI	Continued drafting statement of the case for opening brief.	0.30
1/8/2020	AGALOSKI	Continued working on opening brief - statement of the case	0.70

# Exhibit A

Time from 10/1/2018 to 4/21/2021

Case No. 268281

Client: Romero, Ms. Patricia L.

			<u>Hours</u>
1/9/2020	AGALOSKI	Continued drafting opening brief arguments section. Spoke with client via telephone regarding case status. Updated client file.	0.90
1/9/2020	AGALOSKI	Finished statement of the case for opening brief. Began drafting arguments of opening brief.	3.00
1/10/2020	AGALOSKI	Continued drafting argument section of opening brief.	3.00
1/10/2020	AGALOSKI	Continued drafting argument section of opening brief.	2.70
1/12/2020	AGALOSKI	Continued drafting argument section of opening brief.	3.00
1/12/2020	AGALOSKI	Continued drafting argument section of opening brief.	1.60
1/12/2020	AGALOSKI	Continued drafting argument section of opening brief.	0.50
1/13/2020	AGALOSKI	Conducted further research on rebutting the presumption of soundness and finished drafting argument section of opening brief.	3.00
1/14/2020	AGALOSKI	Made addition to opening brief.	0.10
1/16/2020	BARBARA	Start to edit draft brief	1.50
1/17/2020	AGALOSKI	Continued making edits on opening brief.	0.60
1/17/2020	AGALOSKI	Made significant additions to argument section of opening brief.	3.00
1/17/2020	BARBARA	Review cases BVA cited, review and add facts from RBA, add arguments and edit existing	2.60
1/17/2020	BARBARA	Edit last argument	0.50
1/17/2020	BARBARA	Made additona; edits to relief and authority	0.90
1/18/2020	BARBARA	Continue to suggest edits to draft, mostly on second argument, reviewed cases to get best quotes and to distinguish BVA cases	1.90
1/18/2020	BARBARA	Refine reversal argument, add cites to why no remand needed, check Miller to see if applies.	0.60
1/18/2020	BARBARA	Continue to edit second argument, summarize cases BVA cited and clarify legal issue	1.50
1/18/2020	BARBARA	Start to review and edit revised draft	0.80
1/19/2020	BARBARA	Continue to make edits to refine argument	0.20
1/21/2020	AGALOSKI	Made final edits to opening brief. Cite checked opening brief. Reviewed opening brief for grammatical accuracy. Prepared opening brief for filing. E-filed opening brief. Received and reviewed email from Court with opening brief. Reviewed document for accuracy. Updated client file.	1.80
1/21/2020	ZACH	Reviewed notes on case. Reviewed opening brief and conducted legal research concerning the presumption of regularity. Discussed case with Alyse.	1.10
3/23/2020	AGALOSKI	Received and reviewed emails from Court with VA counsel's motion to extend deadline for opening brief and clerk's stamp granting motion. Updated deadlines and client file.	0.10
5/7/2020	AGALOSKI	Received and reviewed email from Court with Appellee's Brief. Updated client file.	0.10
5/12/2020	AGALOSKI	Reviewed Secretary's brief; posted case strategy note to file in preparation of drafting reply brief.	0.50
5/19/2020	AGALOSKI	Participated in case strategy meeting.	0.20
5/19/2020	ZACH	Discussed litigation strategy and probability of moving for panel and argument.	0.30
5/20/2020	AGALOSKI	Drafted and sent email to VA counsel; updated client file.	0.10
6/26/2020	AGALOSKI	Reviewed pleadings to prepare for drafting of reply brief.	1.10
6/26/2020	AGALOSKI	Began drafting argument outlines for reply brief.	2.80
6/29/2020	AGALOSKI	Continued drafting reply brief.	1.60

# Exhibit A

Time from 10/1/2018 to 4/21/2021

**Case No. 268281**

**Client: Romero, Ms. Patricia L.**

			<u>Hours</u>
6/29/2020	AGALOSKI	Began drafting reply brief.	2.60
6/29/2020	AGALOSKI	Continued outlining arguments for reply brief.	2.40
6/30/2020	AGALOSKI	Completed first argument outline of reply brief.	0.40
6/30/2020	BARBARA	Add to outline for reply brief after reading OGC brief	0.80
7/1/2020	AGALOSKI	Conducted additional legal research on presumption of regularity, worked on first argument of reply brief.	2.70
7/1/2020	AGALOSKI	Finished first argument of reply brief.	0.60
7/1/2020	AGALOSKI	Continued drafting reply brief.	2.90
7/1/2020	AGALOSKI	Continued drafting reply brief.	2.40
7/2/2020	AGALOSKI	Conducted further legal research and worked on second argument of reply brief.	2.50
7/2/2020	AGALOSKI	Continued making edits to reply brief	2.70
7/2/2020	AGALOSKI	Continued making edits on reply brief.	1.00
7/2/2020	BARBARA	Continue to review and edit draft, change order and do new summary.	1.80
7/2/2020	BARBARA	Start to review and edit draft reply	1.00
7/2/2020	CMC	Review second and third arguments in reply brief for legal accuracy.	1.80
7/3/2020	BARBARA	Start to review and make additional edits to revised draft	0.70
7/3/2020	BARBARA	Review and edit revised first argument to focus on BVA fact finding	2.30
7/3/2020	BARBARA	Complete review and editing of first argument, add cites for VA argument and check case law	1.50
7/5/2020	AGALOSKI	Conducted legal research on statutory interpretation, posted case strategy notes to file and edits on brief.	0.60
7/5/2020	AGALOSKI	Drafted motion for panel.	0.70
7/5/2020	AGALOSKI	Conducted legal research on AMA and made addition to reply brief.	0.20
7/6/2020	AGALOSKI	Reviewed RBA and cite checked reply brief. Reviewed reply brief for grammatical accuracy. Prepared reply brief for filing. E-filed reply brief. Received and reviewed email from Court with reply brief. Reviewed document for accuracy. Updated client file.	1.70
7/6/2020	BARBARA	Prepare and file notice of appearance; update file	0.10
7/8/2020	AGALOSKI	Draft and sent email to VA counsel, updated client file.	0.10
7/8/2020	AGALOSKI	Received and reviewed email from VA counsel; responded to email and updated client file.	0.10
7/8/2020	BARBARA	Continue to review draft motion for panel, review pleadings to see what arguments to make for panel, make additional notes about theory	0.60
7/8/2020	BARBARA	Start to review motion for panel	0.10
7/17/2020	BARBARA	Review and edit motion for oral argument	0.30
7/17/2020	ZACH	Reviewed pleadings and drafted motion for oral argument. Sent new motion to VA counsel for position.	2.00
7/20/2020	AGALOSKI	Received and reviewed Court's email with record of proceeding. Reviewed record of proceeding and compared to pleadings to ensure accuracy and completeness. Prepared and e-filed response to record of proceedings. Updated client file.	0.30
7/20/2020	ZACH	Finalized motion for oral argument.	0.40
7/30/2020	AGALOSKI	Received and reviewed email from Court with Judge assignment. Updated client file.	0.10
8/3/2020	AGALOSKI	Received and reviewed email from Court with Order submitting case to panel. Updated client file.	0.10

# Exhibit A

Time from 10/1/2018 to 4/21/2021

**Case No. 268281**

**Client: Romero, Ms. Patricia L.**

			<u>Hours</u>
8/3/2020	AGALOSKI	Received and reviewed email with Judge's stamp order granting motion for oral argument	0.10
8/6/2020	AGALOSKI	Received and reviewed Court order scheduling oral argument, updated client file.	0.10
8/19/2020	AGALOSKI	Received and reviewed email from Court with VA counsel's entry of appearance. Updated client file.	0.10
9/21/2020	ZACH	Began preparation for oral argument. Reviewed all pleadings and began reading case law cited by parties.	3.00
9/22/2020	BARBARA	Review reply brief and take notes on possible issues for oral argument	0.40
9/23/2020	AGALOSKI	Reviewed pleadings to prepare for oral argument walk through	0.40
9/23/2020	BARBARA	Preparation for walkthrough of oral argument	1.00
9/28/2020	AGALOSKI	Prepared for and participated in oral argument walk through.	1.40
9/28/2020	BARBARA	Walk through of oral argument to discuss issues and next steps	1.20
9/28/2020	ZACH	Continued oral argument prep. Continued reviewing caselaw and participated in "walk through" of oral argument strategy.	2.90
9/28/2020	ZACH	Continued preparation for oral argument. Reviewed entire record and continued to review relevant case law.	3.00
10/5/2020	ZACH	Continued preparation for oral argument. Reviewed caselaw and record.	2.80
10/7/2020	AGALOSKI	Prepared for and participated in first moot oral argument.	2.00
10/7/2020	ZACH	Continued preparation for oral argument. Review of record and caselaw. Drafted opening statement for oral argument. Participated in first full moot.	2.90
10/7/2020	ZACH	Continued preparation for oral argument. Review of record and caselaw.	3.00
10/9/2020	ZACH	Continued preparation for oral argument. Review of record and caselaw. Edited opening statement.	3.00
10/11/2020	ZACH	Continued preparation for oral argument. Review of several cited cases and outlining of oral argument.	2.50
10/12/2020	ZACH	Continued preparation for oral argument. Listened to Crumlich oral argument. Review of several more cited cases and continued outlining of oral argument.	2.60
10/13/2020	AGALOSKI	Prepared for and participated in second moot oral argument	1.70
10/13/2020	ZACH	Reviewed caselaw involving 38 U.S.C. 7105 and discussed mailing issues with Robert Chisholm.	1.50
10/13/2020	ZACH	Prepared for and participated in second full moot and then discussed further oral argument strategy.	2.90
10/13/2020	ZACH	Continued preparation for oral argument, including review of evidentiary standards and caselaw.	3.00
10/14/2020	BARBARA	Review BVA decision and pleadings, review relevant RBA cites, create document with cites re: failure to receive SOC, list issues to discuss in oral argument	1.20
10/15/2020	BARBARA	Last preparations for oral argument and participation in oral argument as second chair.	3.00
10/15/2020	ZACH	Last preparations for oral argument and participation in oral argument.	3.00
11/20/2020	AGALOSKI	Reviewed decision against pleadings and case strategy notes to review legal analysis. Posted detailed note to client file.	1.00
11/20/2020	AGALOSKI	Received and reviewed email from Court with decision, reviewed document for accuracy and updated client file.	0.10
11/20/2020	ZACH	Reviewed Court's precedential 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. Discussed case with briefing and oral argument team.	1.30

# Exhibit A

Time from 10/1/2018 to 4/21/2021

Case No. 268281

Client: Romero, Ms. Patricia L.

			<u>Hours</u>
12/11/2020	AGALOSKI	Received and reviewed email from Court with VA counsel's motion for reconsideration; reviewed arguments in motion for reconsideration. Updated client file.	0.60
1/25/2021	APHILLIP	Received and reviewed email from Court with new panel decision. Reviewed panel decision for legal analysis. Posted note to file.	0.60
1/25/2021	ZACH	Reviewed reconsidered decision from the Court. Note to the file.	0.80
2/22/2021	APHILLIP	Received and reviewed email from Court with Judgment. Reviewed document for accuracy. Updated client file.	0.10
3/5/2021	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
4/20/2021	APHILLIP	Received and reviewed email from Court with mandate. Reviewed document for accuracy. Updated client file.	0.10
4/21/2021	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
4/21/2021	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.30
4/21/2021	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>
<b>AGALOSKI</b>	<b>89.8</b>	<b>\$ 209.09</b>	<b>\$ 18,776.28</b>
<b>APHILLIP</b>	<b>0.8</b>	<b>\$ 209.09</b>	<b>\$ 167.27</b>
<b>BARBARA</b>	<b>26.5</b>	<b>\$ 201.51</b>	<b>\$ 5,340.02</b>
<b>BRADLEY</b>	<b>0.4</b>	<b>\$ 209.09</b>	<b>\$ 83.64</b>
<b>CMC</b>	<b>1.8</b>	<b>\$ 209.09</b>	<b>\$ 376.36</b>
<b>CSCOTT</b>	<b>2.3</b>	<b>\$ 180.00</b>	<b>\$ 414.00</b>
<b>DANIELLE</b>	<b>1.5</b>	<b>\$ 209.09</b>	<b>\$ 313.64</b>
<b>ZACH</b>	<b>45.1</b>	<b>\$ 209.09</b>	<b>\$ 9,429.96</b>
	<b>168.2</b>		<b>\$ 34,901.17</b>

## USAO ATTORNEY'S FEES MATRIX — 2015-2021

*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	2019-20	2020-21
31+ years	568	581	602	613	637	665
21-30 years	530	543	563	572	595	621
16-20 years	504	516	536	544	566	591
11-15 years	455	465	483	491	510	532
8-10 years	386	395	410	417	433	452
6-7 years	332	339	352	358	372	388
4-5 years	325	332	346	351	365	380
2-3 years	315	322	334	340	353	369
Less than 2 years	284	291	302	307	319	333
Paralegals & Law Clerks	154	157	164	166	173	180

### *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. The USAO rates for years prior to and including 2014-15 remains the same as previously published on the USAO's public website.
5. 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.
6. 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).
7. The attorney's fees matrices issued by the United States Attorney's Office are intended to facilitate the settlement of attorney's fees claims in actions in which the United States may be liable to pay attorney's fees to the prevailing party and the United States Attorney's Office is handling the matter. The United States Attorney's Office is presently working to develop a revised rate schedule, based upon current, realized rates paid to attorneys handling complex federal litigation in the District of Columbia federal courts. This effort is motivated in part by the D.C. Circuit's urging the development of "a reliable assessment of fees charged for complex federal litigation in the District." *D.L. v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019). This new matrix should address the issues identified by the majority in *D.L.*, but it is expected that it will be some time before a new matrix can be prepared. In the interim, for matters in which a prevailing party agrees to payment pursuant to the matrices issued by the United States Attorney's Office, the United States Attorney's Office will not demand that a prevailing party offer the additional evidence that the law otherwise requires. See *Eley*, 793 F.3d at 104 (quoting *Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995)) (requiring "evidence that [the] 'requested rates are in line with those prevailing in the community for similar services'").