

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

MICHAEL L. CHAVIS)
Appellant,)
)
v.) CAVC No. 18-2928
) 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 **\$28,647.57**.

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).

After oral argument, in a precedential decision, the Court set aside and remanded the Board's April 20, 2018 decision based upon the Board's error of law when it incorrectly applied §§ 4.40 and 4.45 in evaluating Appellant's lumbar spine disability. See pages 1-29 of the Court's decision. The mandate was issued on July 27, 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 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. Chavis 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. Chavis 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 error when it incorrectly applied the law. 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).

Eight attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Matthew Pimentel, Danielle M. Gorini, Nicholas Phinney, Kaitlyn Degnan, Amy Odom, Barbara Cook, Christian McTarnaghan, and Zachary Stolz.¹ Attorney Matthew Pimentel graduated from Roger Williams University

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 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 *Baldrige v. Nicholson*, 19 Vet.App. 227, 237-38 (2005) ("the fees sought must be 'based on the distinct contribution of each individual

Law School in 2013 and the *Laffey* Matrix establishes that \$452.00 is the prevailing market rate for an attorney with his experience.² 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. Nicholas Phinney graduated from Roger Williams University

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 *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.”).

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).

Law School in 2007 and the *Laffey* Matrix establishes that \$532.00 is the prevailing market rate for an attorney with his experience. Kaitlyn Degnan graduated from Syracuse University Law School in 2017 and the *Laffey* Matrix establishes that \$380.00 is the prevailing market rate for an attorney with her experience. Amy Odom graduated from University of Florida Law School in 2006 and the *Laffey* Matrix establishes that \$532.00 is the prevailing market rate for an attorney with 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. Christian McTarnaghan graduated from Suffolk University Law School in 2014 and the *Laffey* Matrix establishes that \$388.00 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 \$591.00 is the prevailing market rate for an attorney with his experience.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$203.69 per hour for Mr. Pimentel, Ms. Gorini, Mr. Phinney, Ms. Degnan, Mr. McTarnaghan, and Mr. Stolz for representation services before the Court.³ This rate per hour, multiplied by the

³ This rate was determined by adjusting the \$125 per hour statutory EAJA rate by

number of hours billed for these six attorneys (97.50) results in a total attorney's fee amount of \$19,859.79.

Appellant seeks attorney's fees at the rate of \$196.28 per hour for Ms. Cook's representation services before the Court.⁴ This rate per hour, multiplied by the number of hours billed for Ms. Cook (13.70) results in a total attorney's fee amount of \$2,689.04.

Appellant seeks attorney's fees at the rate of \$200.49 per hour for Ms. Odom's representation services before the Court.⁵ This rate per hour, multiplied 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 December 2018 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).

⁴ 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, December 2018, divided by the data from the Midwest Consumer Price Index-U for December 2017 or 230.548.

⁵ 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 Washington-Arlington-Alexandria, DC-MD-VA-WV. *See Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from

the number of hours billed for Ms. Odom (28.30) results in a total attorney's fee amount of \$5,673.87.

In addition, Appellant seeks reimbursement for the following expenses:

KDegnan: Flight for oral argument: \$186.60

Hotel for oral argument: \$200.00

Transportation in DC / Parking: \$38.27

Based upon the foregoing, the total fee sought is **\$28,647.57**.

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

March 29, 1996 (the start date for the EAJA rate), to December 2018 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).

Exhibit A

		<u>Hours</u>
5/15/2018 MP	Review BVA decision. Conduct legal research. Recommend case for appeal. Suggest arguments for appeal.	0.60
6/7/2018 NP	Reviewed file & appeal documents. Filed Notice of Appeal, Notice of Appearance for Z. Stolz as lead counsel, DFH & Fee Agreement with the Court. Received, reviewed, & saved Court confirmation email to the file. Updated case file.	0.10
6/11/2018 NP	Confirmed Court's docketing of appeal; updated client file	0.10
6/20/2018 KD	Prepared and efiled notice of appearance. Updated client file accordingly.	0.10
6/27/2018 KD	Received BVA decision transmittal and copy from court. Reviewed for accuracy and downloaded to client file. Updated client file accordingly.	0.10
8/9/2018 KD	Received and reviewed VA notice of appearance. Updated client file accordingly.	0.10
8/9/2018 KD	Received RBA certificate of service. Reviewed for accuracy and downloaded to client file. Updated client file accordingly.	0.10
8/14/2018 NP	Reviewed RBA to determine need for dispute	0.90
8/29/2018 KD	Received briefing order from court. Reviewed, calculated due dates, downloaded, and updated client file accordingly.	0.10
8/31/2018 KD	Drafted status letter to client.	0.10

Exhibit A

		<u>Hours</u>
9/17/2018	KD	0.10
	Received PBC order from court. Reviewed and downloaded to client file. Calculated due dates and updated client file accordingly.	
9/27/2018	KD	1.40
	Reviewed RBA for casemapping and PBC purposes up to R-712	
9/28/2018	KD	1.00
	Began drafting PBC memo.	
9/28/2018	KD	2.40
	Reviewed remainder of RBA for casemapping and PBC purposes.	
9/28/2018	KD	3.00
	Completed draft of and sent PBC memo to OGC and CLS	

_____	<u>Amount</u>
10.20	\$2,077.65

_____	<u>Amount</u>
10.20	\$2,077.65

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Kaitlyn Degnan	8.50	203.69	\$1,731.38
Matthew Pimentel	0.60	203.69	\$122.21
Nicholas Phinney	1.10	203.69	\$224.06

Exhibit A

Time from 10/1/2018 to 7/27/2021

Case No. 261206

Client: Chavis, Mr. Michael L.

			<u>Hours</u>
10/1/2018	KDEGNAN	Drafted PBC letter to send to client.	0.10
10/12/2018	KDEGNAN	Participated in PBC with VA and CLS.	0.20
10/12/2018	KDEGNAN	Wrote post PBC memo recording VA's remand offer and potential issues for briefing.	0.40
10/12/2018	KDEGNAN	Reviewed PBC memo, Board decision, and relevant RBA citations to prepare for conference.	0.20
10/15/2018	KDEGNAN	Called client to discuss VA's remand offer.	0.40
10/23/2018	KDEGNAN	Called client to talk over VA's remand offer again. Wrote memo to file recording call.	0.40
10/23/2018	KDEGNAN	Emailed VA counsel to communicate client's rejection of remand offer.	0.10
12/24/2018	KDEGNAN	Began drafting argument on misinterpretation of 4.40 and 4.45.	2.50
12/27/2018	CMC	Review opening brief for legal accuracy, grammar, and flow. Suggest addition schedular sleep impairment argument. Suggest adding M21-1 argument.	1.20
12/27/2018	KDEGNAN	Finished drafting statement of the case.	0.60
12/27/2018	KDEGNAN	Drafted summary of the argument and conclusion to opening brief.	0.80
12/27/2018	KDEGNAN	Drafted radiculopathy argument, issues presented and began drafting statement of the case.	3.00
12/27/2018	KDEGNAN	Reviewed and implemented edits to opening brief	2.20
12/27/2018	KDEGNAN	Drafted failure to apply 4.40 and 4.45 and ES referral arguments.	2.30
12/28/2018	CMC	Review edited draft of opening brief. Suggest adding to prejudice in neuro section of brief.	0.60
12/28/2018	KDEGNAN	Implemented additional suggestions to opening brief.	0.40
12/28/2018	KDEGNAN	Made final edits to brief. Checked citation to record or authority, and efiled.	2.40
2/26/2019	KDEGNAN	Received, reviewed, and responded to email from Clifton Prince that we are unopposed to an extension.	0.10
2/27/2019	KDEGNAN	Received VA's motion to extend their briefing deadline from Court. Reviewed for accuracy and downloaded to client file. Updated client file accordingly.	0.10
2/27/2019	KDEGNAN	Received and reviewed clerk stamp granting VA's motion to extend their deadline. Calculated new deadlines and updated client file accordingly.	0.10
4/11/2019	KDEGNAN	Received and reviewed email with VA's brief. Calculated due dates and updated client file accordingly.	0.10
4/16/2019	KDEGNAN	Began reviewing VA's brief.	0.30
4/23/2019	KDEGNAN	Drafted memo to file with issues in VA's brief to prepare for litigation strategy meeting.	0.50
4/23/2019	ZACH	Participated in meeting regarding case and briefing strategy.	0.10
5/2/2019	KDEGNAN	Discussed VA's brief with client.	0.30
5/31/2019	KDEGNAN	Began drafting reply brief.	1.50
5/31/2019	KDEGNAN	Reviewed caselaw cited by the Secretary in his brief and took notes.	1.90
5/31/2019	KDEGNAN	Continued drafting reply brief.	3.00
6/4/2019	CMC	Review reply brief for legal accuracy.	2.60
6/5/2019	KDEGNAN	Reviewed and implemented edits to reply brief.	1.50
6/6/2019	BARBARA	Review and edit revised reply, suggest places and arguments to make in response, reviewed Johnston and check DC	1.60
6/7/2019	BARBARA	Review revised draft, suggest additions and some analysis to reference OGC brief	0.90
6/7/2019	KDEGNAN	Implemented additional edits to reply brief.	2.40

Exhibit A

Time from 10/1/2018 to 7/27/2021

Case No. 261206

Client: Chavis, Mr. Michael L.

			<u>Hours</u>
6/7/2019	KDEGNAN	Reviewed and implemented additional edits to reply brief.	0.40
6/8/2019	KDEGNAN	Reviewed final draft of brief. Checked citation to record and authority. Efiled.	0.70
6/20/2019	KDEGNAN	Received and reviewed email with ROP from court and downloaded to client file.	0.10
6/20/2019	KDEGNAN	Reviewed ROP to ensure accuracy. Noted missing page. Emailed OGC attorney to alert them of discrepancy.	0.30
7/1/2019	KDEGNAN	Emailed follow up inquiry to OGC regarding missing page in ROP.	0.10
7/3/2019	KDEGNAN	Received and reviewed clerk stamp granting VA's motion for leave. Updated client file accordingly.	0.10
7/3/2019	KDEGNAN	Received VA's motion for leave to amend ROP. Reviewed for accuracy and downloaded to client file. Updated client file accordingly.	0.10
7/3/2019	KDEGNAN	Reviewed amended ROP to ensure missing page was included. Prepared response to ROP and efiled with court. Updated client file accordingly.	0.20
7/9/2019	KDEGNAN	Received and reviewed judge assignment from court. Updated to client file accordingly.	0.10
9/11/2019	KDEGNAN	Received and reviewed panel order from Court. Updated client file.	0.10
9/16/2019	KDEGNAN	Review case notes and pleadings.	0.50
9/17/2019	KDEGNAN	Received and reviewed court order for oral argument. Updated client file accordingly.	0.10
9/18/2019	KDEGNAN	Telephone conversation to discuss panel and oral argument orders with client.	0.20
9/26/2019	KDEGNAN	Received and reviewed order scheduling oral argument. Updated client file accordingly.	0.10
10/16/2019	KDEGNAN	Emailed OGC regarding upcoming oral argument.	0.10
10/28/2019	KDEGNAN	Reviewed case notes regarding oral argument and updated file accordingly.	0.10
11/1/2019	BARBARA	Review pleadings and participate in oral argument walk through	0.90
11/1/2019	KDEGNAN	Reviewed pleadings. Participated in oral argument walk through.	0.90
11/1/2019	ZACH	Prepared for and participated in meeting concerning briefing strategy and jurisdiction issues.	0.80
11/8/2019	KDEGNAN	Researched mem decs on ankylosis.	1.70
11/13/2019	AODOM	Prepared and filed notice of appearance; updated file.	0.20
11/13/2019	AODOM	Participated in first moot and post-moot discussion; revised oral argument outline .	1.50
11/13/2019	AODOM	Reviewed pleadings, notes, and RBA; conducted legal research and prepared additional notes in preparation for first moot.	3.00
11/13/2019	BARBARA	Participated in first mootl asked potential questions.	1.40
11/13/2019	KDEGNAN	Reviewed case notes, pleadings and participated in first moot.	1.70
11/13/2019	ZACH	Conducted legal research concerning Johnston and 4.40 and 4.45. Participate in first full moot court as "judge." Asked questions and helped prepare oral argument strategy.	3.00
11/18/2019	AODOM	Re-read Johnston, prepare argument regarding same for second moot.	0.50
11/18/2019	AODOM	Listened to Lyles oral argument; prepared notes in advance of second moot.	1.20
11/18/2019	KDEGNAN	Prepared materials to take to argument.	0.60
11/19/2019	AODOM	Telephone conference with client regarding oral argument, answered his questions, prepared memo to file regarding same.	0.40
11/19/2019	AODOM	Reviewed and analyzed relevant authorities in preparation for oral argument.	1.40
11/19/2019	AODOM	Reviewed and analyzed ROP, prepared binder of ROP for oral argument.	2.60
11/19/2019	AODOM	Prepared for and participated in second moot and debriefing; revised opening.	3.00

Exhibit A

Time from 10/1/2018 to 7/27/2021

Case No. 261206

Client: Chavis, Mr. Michael L.

			<u>Hours</u>
11/19/2019	BARBARA	Prepared for and participated in second moot; discuss case with Amy after, and suggest revisions to opening	1.90
11/19/2019	KDEGNAN	Drove from office to PVD. Flew from PVD to DCA. Metro from DCA to hotel.	2.20
11/19/2019	KDEGNAN	Emailed client re: oral argument online.	0.10
11/19/2019	KDEGNAN	Received and reviewed OGC notice of appearance. Updated client file accordingly.	0.10
11/19/2019	KDEGNAN	Reviewed pleadings to prepare for moot. Participated in second moot and strategy discussion.	1.90
11/19/2019	ZACH	Conducted legal research concerning 4.40 and cases after Johnston. Participated in second full moot court. Contributed as a "judge" and helped with oral argument strategy.	3.00
11/20/2019	AODOM	Traveled to Court, participated in pre-argument conference, further preparation for argument, participated in argument.	3.00
11/20/2019	KDEGNAN	Metro from CAVC to DCA. Flight to PVD.	1.70
11/20/2019	KDEGNAN	Travel from hotel to CAVC. Participated in pre-argument meeting and as second chair during oral argument.	2.00
1/16/2020	AODOM	Received and reviewed Secretary's notice of clarification re BVA jurisdiction over radiculopathy.	0.20
1/16/2020	AODOM	Telephone conference with VAGC attorney Fusina regarding VA's notice of clarification; memo to file regarding same.	0.30
1/16/2020	KDEGNAN	Received notice pleading from OGC. Reviewed and assessed next steps. Updated client file with recommendation.	0.20
3/3/2020	KDEGNAN	Telephone conversation with client to update on status of case.	0.10
4/30/2020	AODOM	Reviewed and analyzed Court's supplemental briefing order; conference with Barb regarding same; prepared memo to file regarding same.	0.50
4/30/2020	KDEGNAN	Received and reviewed order from court. Updated client file accordingly.	0.10
5/4/2020	KDEGNAN	Reviewed court's order, pleadings, and other cases about jurisdictional question. Note to the file.	1.30
5/5/2020	KDEGNAN	Received and reviewed VA attorney Scruggs notice of appearance. Updated client file accordingly.	0.10
5/7/2020	AODOM	Reviewed supplemental brief outline and prepared comments to same.	0.50
5/7/2020	KDEGNAN	Reviewed RBA and related cases. Prepared outline of response to supplemental pleading order.	1.70
5/8/2020	AODOM	Reviewed JMRs in Walker and Coltrane (case previously scheduled for oral argument on jurisdictional question) and reviewed pertinent portions of RBA, made additional notes on outline regarding same.	0.90
5/13/2020	KDEGNAN	Discussed case with OGC attorney.	0.20
5/18/2020	AODOM	Conducted legal research, reviewed and edited supplemental brief, and provided legal advice to K. Degnan regarding additional edits to be made by her.	2.70
5/18/2020	KDEGNAN	Reviewed edits to supplemental briefing. Conducted appropriate legal research and prepared edited draft.	3.00
5/18/2020	KDEGNAN	Prepared supplemental brief	3.00
5/19/2020	AODOM	Reviewed and edited revised draft of supplemental brief.	1.10
5/20/2020	AODOM	Conducted legal research regarding Snyder v. Principi and related cases.	1.70
5/20/2020	AODOM	Reviewed and revised draft of brief.	2.00
5/20/2020	KDEGNAN	Researched jurisdictional question.	0.70
5/20/2020	KDEGNAN	Reviewed AFO's edits to draft of supplemental pleading. Implemented, conducted additional research into nature of M21 and 7252, and made additional edits accordingly.	1.10

Exhibit A

Time from 10/1/2018 to 7/27/2021

Case No. 261206

Client: Chavis, Mr. Michael L.

			<u>Hours</u>
5/28/2020	BARBARA	Review and edit draft supplemental pleading	0.50
5/28/2020	KDEGNAN	Reviewed additional edits to supplemental pleadings.	1.00
5/28/2020	KDEGNAN	Received, reviewed, and responded to email from OGC about their motion to extend page limit.	0.10
5/29/2020	AODOM	Participated in supplemental briefing strategy meeting.	0.50
5/29/2020	BARBARA	Start to review revised draft, draft outline for new section on why BVA had jurisdiction over part and parcel and no bifurcation	1.30
5/29/2020	BARBARA	Review prior cases and assess argument on NOD	0.40
5/29/2020	KDEGNAN	Continued implementing edits to supplemental briefing. Researched scope of NODs and added additional language accordingly.	1.40
5/29/2020	KDEGNAN	Added additional language	0.70
5/29/2020	KDEGNAN	Began implementing additional edits to supplemental briefing	2.80
5/30/2020	BARBARA	Make further edits, review and distinguish Snyder, review Gifford	2.20
5/30/2020	BARBARA	Add 7104 and edit for clarity	0.50
5/30/2020	BARBARA	Review and edit revised draft	1.30
5/31/2020	KDEGNAN	Conducted legal research to determine additional language to add.	2.00
6/1/2020	BARBARA	Reviewed relevant cases and comment on how to argue M21 is binding	0.80
6/1/2020	KDEGNAN	Conducted final review of supplemental brief. Efiled. Updated client file accordingly.	0.80
6/1/2020	KDEGNAN	Reviewed and implemented BJC's edits to supplemental pleading. Conducted additional legal research into whether M21 provision is binding.	1.40
6/2/2020	KDEGNAN	Received and reviewed VA's motion for leave and supplemental memo. Downloaded to client file.	0.30
8/25/2020	KDEGNAN	Telephone conference with client.	0.10
12/2/2020	KDEGNAN	Received call from client and provided status update of case. Wrote memo to file.	0.20
12/4/2020	KDEGNAN	Discussed status of appeal with client.	0.20
1/6/2021	AODOM	Reviewed and analyzed Bailey v. Wilkie decision to determine applicability to issues on appeal; prepared memo to file regarding same.	0.70
1/6/2021	KDEGNAN	Reviewed Court's decision in Bailey v. Wilkie to determine applicability to this case, took notes as required.	0.70
1/19/2021	KDEGNAN	Began drafting 30(b) supplemental authority for Bailey v. Wilkie.	0.40
1/20/2021	KDEGNAN	Reviewed supplemental briefs and continued drafting 30(B) for Bailey v. Wilkie.	0.60
1/22/2021	AODOM	Reviewed pertinent portions of Bailey v. Wilkie and edited supplemental authorities letter.	0.40
1/22/2021	KDEGNAN	Finalized draft 30(b) supplemental authority. Efiled.	0.40
4/20/2021	KDEGNAN	Reviewed CAVC decision in case, compared to arguments, and prepared summary of decision.	1.00
4/20/2021	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.	0.90
4/27/2021	KDEGNAN	Skimmed through decision results to prepare to speak with client. Explained CAVC decision to client and answered his questions. Prepared memo to file outlining conversation. Reviewed file to ensure up to date, calculated judgment and mandate deadlines and updated accordingly.	0.70
5/7/2021	KDEGNAN	Received and reviewed VA's motion for reconsideration.	0.50

Exhibit A

Time from 10/1/2018 to 7/27/2021

Case No. 261206

Client: Chavis, Mr. Michael L.

			<u>Hours</u>
5/7/2021	ZACH	Reviewed VA's motion for reconsideration.	1.00
5/18/2021	KDEGNAN	Received and reviewed court's order denying VA's motion for remand. Calculated new dates and updated client file.	0.10
5/21/2021	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
5/25/2021	KDEGNAN	Received judgment of court. Reviewed to ensure docketed accurately and updated client file.	0.10
7/27/2021	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
7/27/2021	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.90
7/27/2021	KDEGNAN	Received notice of mandate. Reviewed to ensure docketed accurately, calculated due dates and updated file.	0.20
7/27/2021	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>
AODOM	28.3	\$ 200.49	\$ 5,673.87
BARBARA	13.7	\$ 196.28	\$ 2,689.04
CMC	4.4	\$ 203.69	\$ 896.24
DANIELLE	2.1	\$ 203.69	\$ 427.75
KDEGNAN	71.2	\$ 203.69	\$ 14,502.73
ZACH	9.6	\$ 203.69	\$ 1,955.42
	129.3		\$ 26,145.05

Expenses:	KDegnan:	Flight to DC for oral argument:	\$186.60
	KDegnan:	Hotel in DC for oral argument:	\$200.00
	KDegnan:	Transportation / Parking:	\$38.27

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'").