

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

WENDELL ANDREWS,)
)
 Appellant,)
)
 v.) Vet. App. No. 19-3227
)
DENIS McDONOUGH,)
 Secretary of Veterans Affairs,)
)
 Appellee.)

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FOR AN AWARD OF REASONABLE ATTORNEYS’ FEES AND
EXPENSES PURSUANT TO 28 U.S.C. § 2412(d)**

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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

WENDELL ANDREWS,)
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 Appellant,)
)
 v.) Vet. App. No. 19-3227
)
 DENIS McDONOUGH,)
 Secretary of Veterans Affairs,)
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 Appellee.)

APPELLANT’S APPLICATION FOR AN AWARD OF REASONABLE 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 U.S. Vet. App. Rule 39, Appellant, Wendell Andrews, applies for an award of reasonable attorneys’ fees and expenses in the amount of **\$ 16,719.27.**

PROCEDURAL HISTORY

On January 17, 2019 the Board of Veterans’ Appeals (“Board”) issued a decision that, *inter alia*, denied Appellant’s claims for entitlement to a rating above 10% for chondromalacia of the right patella with degenerative joint disease (DJD) and a rating above 10% for DJD of the left knee.¹ Appellant filed a timely notice of Appeal with this Court on May 15, 2019.

¹ That part of the decision in which the Board granted entitlement to service connection for bilateral pes planus was not before the Court, as the finding was favorable to Appellant. See *Medrano v. Nicholson*, 21 Vet. App. 165, 170 (2007). Further, Appellant did not challenge that part of the Board decision that denied entitlement to a rating above 10% for left knee instability. See *Pederson v. McDonald*, 27 Vet. App. 276, 283-85 (2015) (en banc). Finally, the Board

On July 9, 2019, the Secretary served on Appellant's counsel the 4,173-page Record Before the Agency ("RBA"). On July 30, 2019, the Court issued an Order to file Appellant's brief within sixty days. On August 22, 2019, the Court issued an Order scheduling a Rule 33 telephonic briefing conference for September 18, 2019.

Pursuant to the Court's Order, Appellant's counsel prepared detailed Rule 33 Summary of the Issues addressing the legal errors committed by the Board in the decision on appeal, which she served on counsel for the Secretary and Central Legal Staff ("CLS") counsel on September 4, 2019. On September 18, 2019, the parties participated in the Rule 33 Conference as scheduled, but failed to arrive at a joint resolution. On March 4, 2020, Appellant filed an Opposed Motion for a Second Rule 33 Conference, which the Court granted on March 6, 2020. The parties participated in a second telephonic briefing conference on March 25, 2020, but were again unable to arrive at a joint resolution.

On April 24, 2020, Appellant filed his 17-page initial brief (hereinafter: "App. Br.") with the Court. In his brief, Appellant argued that the Board clearly erred by finding that he is not entitled to separate ratings under 38 C.F.R. § 4.71a, Diagnostic Code (DC) 5259, for his right and left knee disabilities. See *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990); App. Br. at 9–11. Specifically, the Board erroneously found that DC 5259 made a distinction between a partial or complete

remanded the claims of entitlement to service connection for a left hip disability and a low back disability, and the merits of those issues were not before the Court. See *Breeden v. Principi*, 17 Vet. App. 475, 478 (2004).

removal of cartilage. See 38 C.F.R. § 4.71a; App. Br. at 10–11. Alternatively, Appellant argued that the Board erred by failing to provide an adequate statement of reasons or bases as to whether separate ratings under DC 5259 were warranted for his meniscal conditions. See 38 U.S.C. §7104(d)(1); App. Br. at 11.

Additionally, Appellant argued that the Board erred by failing to ensure compliance with the VA's duty to assist as the VA examination it relied upon was inadequate for rating purposes. See 38 U.S.C. § 5103A(a)(1); App. Br. at 12–14. Specifically, the September 2017 VA examination report was inadequate because the examiner failed to provide (1) estimates of range of motion loss due to additional functional loss during flare-ups, see *Sharp v. Shulkin*, 29 Vet. App. 26 (2017); App. Br. at 12–14; and (2) an adequate rationale for his opinion, see *Colvin v. Derwinski*, 1 Vet. App. 171 (1991); 12–14. Finally, Appellant argued that, if the Court vacated and remanded the Board's decision, in consideration of the Veterans Appeals Improvement and Modernization Act ("AMA"), it should order the Secretary to expedite proceedings, provide him an opportunity for a hearing and to submit additional evidence. See *Kutscherousky v. West*, 12 Vet. App. 369 (1999); App. Br. at 14–16. Appellant also argued that, in order for the Board to be clear as to the continuing applicability of the holding in *Fletcher v. Derwinski* for claims governed by the AMA, the Court should also order the Board to "reexamine the evidence of record, seek any other evidence the Board feels is necessary, and issue a timely, well-supported decision in this case;" in that a "remand is meant to entail a critical examination of the justification of the decision." 1 Vet. App. 394,

397 (1991); App. Br. at 16.

On June 23, 2020, the Secretary filed his responsive brief (hereinafter: “Sec. Br.”) with the Court. In his brief, the Secretary conceded that the Court should vacate and remand the relevant part of the Board’s decision because the Board incorrectly applied the law in adjudicating Appellant’s increased rating claims. See Sec. Br. at 8–14. Additionally, the Secretary argued that Appellant’s request for the Court to provide an opportunity for a hearing and to submit additional evidence was not ripe for review. See Sec. Br. at 15–24. The Secretary addressed *Fletcher* only to the extent that it implicated Appellant’s right to a hearing and to submit evidence on remand.

On August 21, 2020, Appellant filed his 15-page Reply Brief (hereinafter: “App. Rep. Br.”) with the Court. Responding to the Secretary’s argument, Appellant explained that the Court should order the Secretary to provide Appellant with the opportunity to submit additional evidence to the Board on remand because it is ripe for judicial resolution. See *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270 (1941); App. Rep. Br. at 2–5. Appellant also further detailed that he would be harmed if the Board is not instructed to conduct a critical examination under *Fletcher*, because “the Board could simply rewrite its prior decision to superficially comply with its duty to provide an adequate statement of reasons or bases....” App. Rep. Br. at 4. Additionally, Appellant explained that the Court should hold that he has the right to submit additional evidence for consideration by the Board during a Court-ordered remand proceeding. See *Thurber v. Brown*, 5 Vet. App. 119 (1993); App. Rep. Br.

at 5-12. Finally, Appellant explained that the Secretary's failure to address the inadequacy of the VA examination, with respect to flare-ups, should be construed as a concession that the examination is inadequate. See *MacWhorter v. Derwinski*, 2 Vet. App. 655 (1992); App. Rep. Br. at 13-15.

On September 1, 2020, the Secretary filed the Record of Proceedings with the Court. On December 7, 2020, the Court ordered the case be submitted to a panel for decision. On December 10, 2020, the Court scheduled oral argument in the case. On February 24, 2021, the Court held oral argument.

On May 28, 2021, the Court issued its Memorandum Decision. (Mem. Dec.) The Court vacated and remanded the relevant part of the decision on appeal, because the Board erred by failing to address the reasonably raised issue of whether 38 C.F.R. § 4.71a, DC 5259, applies to Appellant's claim. Mem. Dec. at 3. The Court held that *Kutscherousky* and *Fletcher* do not apply, but only insofar as Appellant argued that Appellant had the right to submit additional evidence to the Board on remand, because the AMA limits the evidence of record to the time of the agency of original jurisdiction (AOJ) decision. Mem. Dec. 9-12. However, the Court found unequivocally that the *Kutscherousky* and *Fletcher* still are controlling in that "we still expect that the Board will 'reexamine the evidence of record, seek any other evidence [], and issue a timely, well-supported decision.'" Mem. Dec. at 13. The Court explained that remand is not "merely for the purposes of rewriting the opinion so that it will superficially comply with the 'reasons or bases requirement' of 38 U.S.C. § 7104(d)(1)." *Id.*

On June 23, 2021, the Court entered Judgment on Appellant's claim. On August 24, the Court entered Mandate, effective August 23, 2021, pursuant to U.S. Vet. App. R. 41.

ARGUMENT

I. APPELLANT IS A PREVAILING PARTY AND ELIGIBLE TO RECEIVE AN AWARD.

Under 28 U.S.C. § 2412(d), a court shall award to a prevailing party fees and other expenses incurred by that party in any civil action, including proceedings for judicial review of agency action. To obtain "prevailing party" status, a party need only to have obtained success "on any significant issue in litigation which achieve[d] some of the benefit ... sought in bringing the suit." *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993) (quoting *Texas State Teachers Ass'n. v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791-92 (1989)).

In this case, Appellant is a prevailing party entitled to an award of fees and costs because the Court vacated the relevant part of the Board's January 17, 2019 decision and remanded the case for further development and readjudication in accordance with its decision. See *Zuberi v. Nicholson*, 19 Vet. App. 541 (2006); *Sumner v. Principi*, 15 Vet. App. 256 (2001) (en banc). The Court-ordered relief creates the "material alteration of the legal relationship of the parties' necessary to permit an award of attorney's fees." *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health and Human Res.*, 532 U.S. 598, 604 (2001) (quoting *Garland Indep. Sch. Dist.*, 489 U.S. at 792).

Appellant is a party eligible to receive an award of reasonable fees and expenses because his net worth did not exceed \$2 million (two million dollars) at the time this civil action was filed. As an officer of the Court, the undersigned counsel hereby states that Appellant's net worth did not exceed \$2 million (two million dollars) at the time this civil action was filed, nor did he own any unincorporated business, partnership, corporation, association, unit of local government, or organization, of which the net worth exceeded \$7 million (seven million dollars) and which had more than 500 employees. See *Bazalo v. Brown*, 9 Vet. App. 304, 309, 311 (1996). In addition, Appellant submitted a Declaration of Financial Hardship, which was accepted for filing by the Court on May 29, 2019. See *Owens v. Brown*, 10 Vet. App. 65, 67 (1997).

II. THE POSITION OF THE SECRETARY OF VETERANS AFFAIRS WAS NOT SUBSTANTIALLY JUSTIFIED.

The Secretary can defeat Appellant's application for fees and costs only by demonstrating that the government's position was substantially justified. See *Brewer v. Am. Battle Monument Comm'n*, 814 F.2d 1564, 1566-67 (Fed. Cir. 1987); *Stillwell v. Brown*, 6 Vet. App. 291, 301 (1994). The U.S. Supreme Court has held that for the position of the government to be substantially justified, it must have a "reasonable basis both in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988); accord *Beta Sys. v. United States*, 866 F.2d 1404, 1406 (Fed. Cir. 1989).

In this case, the Secretary's administrative and litigation positions were not substantially justified. As described in the "Procedural History," *supra*, the Court

vacated and remanded the Board's January 17, 2019 decision because the Board erred by failing to address the reasonably raised issue of entitlement to separate ratings under 38 C.F.R. § 4.71a, DC 5259. This error and others committed by the Board, had no reasonable basis in fact or in law.

In addition, the litigation position of the Secretary with respect to his argument against the applicability of *Kutscherousky* and *Fletcher* had no reasonable basis in fact or in law, as the Court held that it still expected that the Board will reexamine the evidence of record, seek any other evidence, and issue a timely, well-supported decision.

III. ITEMIZED STATEMENT OF SERVICES RENDERED AND AMOUNT OF REASONABLE FEES AND EXPENSES

An itemized statement of the services rendered is attached to this application as Exhibit A and the reasonable fees and expenses for which Appellant seeks compensation are listed below. Included in Exhibit A is a certification that lead counsel has "(1) reviewed the combined billing statement and is satisfied that it accurately reflects the work performed by all counsel and (2) considered and eliminated all time that is excessive or redundant." *Baldrige v. Nicholson*, 19 Vet. App. 227, 240 (2005). In the exercise of billing judgment, Appellant has eliminated **96.4** hours of attorney time from this itemized statement and this fee petition.

Appellant seeks attorneys' fees at the following rates for representation in the Court of Appeals for Veterans Claims:²

<u>Name</u>	<u>Rate</u>	<u>Hours</u>	<u>Fee Amount</u>
Barton F. Stichman (1974 law graduate)	\$ 209.57	3.8	\$ 796.37
Christine Cote Hill (1996 law graduate)	\$ 209.57	3.6	\$ 754.45

² A rate in excess of \$125 per hour for the attorneys for Appellant in this case is justified based on the increase in the cost of living since the EAJA was amended in March 1996. See 28 U.S.C. § 2412(d)(2)(A)(ii). The \$125 attorney fee rate, adjusted for inflation for the Washington Metropolitan Area, was \$ 209.57 in April 2020, the month Appellant filed his initial brief. See Bureau of Labor Statistics Data, CPI-U (Exhibit B). This rate was calculated by using the CPI-U for the Washington-Arlington-Alexandria, DC-VA-MD-WV area adjusted for inflation between March 1996 and April 2020, using the average of the data for the months prior to and after initial brief was filed. See Exhibit B; *Mannino v. West*, 12 Vet. App. 242 (1999); see also *Apodackis v. Nicholson*, 19 Vet. App. 91, 95 (2005). Related to the work of Katy Clemens, who worked in Columbia, Maryland and Washington, DC, the \$125 attorney fee rate, adjusted for inflation for the D.C. area in April 2020 is \$209.57. Please note that the hourly rate calculated by using the CPI-U for the Baltimore-Columbia-Towson, Maryland area adjusted for inflation between March 1996 and April 2020 yields a higher hourly rate (\$211.58). The market rates for Appellant's attorneys exceeded the requested rates per hour during the relevant time period. See *Covington v. District of Columbia*, 839 F. Supp. 894, 904–05 (D.D.C. 1993), *aff'd*, 58 F.3d 1101 (D.C. Cir. 1995). The prevailing market rate for the work done by paralegals and law clerks was at least \$166.00 from June 1, 2018, to May 31, 2019; at least \$173.00 from June 1, 2019 to May 31, 2020; and at least \$180.00 from June 1, 2020, to the present. See USAO Attorney's Fees Matrix, 2015-2021 (Exhibit C) ("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 . . . area."); see also *Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996); *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008).

Richard V. Spataro (2005 law graduate)	\$ 209.57	21.7	\$ 4,547.67
Alexis M. Ivory (2005 law graduate)	\$ 209.57	39.3	\$ 8,236.10
Katy S. Clemens (2006 law graduate)	\$ 209.57	1.2	\$ 251.48
Angela Nedd (paralegal)	\$ 166.00	0.6	\$ 99.60
Sunny Chowdhury (paralegal)	\$ 180.00	0.3	\$ 54.00
Christopher Williams (paralegal)	\$ 173.00	0.3	\$ 51.90
Janee LeFrere (paralegal)	\$ 173.00 \$ 180.00	0.9 0.7	\$ 155.70 \$ 126.00
Brianna LeFrere (paralegal)	\$ 180.00	0.6	\$ 108.00
Bryan Medema (law clerk)	\$ 173.00	6.0	\$ 1,038.00
Alexandra Gonsman (law clerk)	\$ 180.00	2.3	\$ 414.00

SUBTOTAL: \$ 16,633.27

The reasonable expenses for which Appellant seeks compensation are:

<u>Nature of Expense</u>	<u>Expense Amount</u>
Federal Express and USPS Charges	\$ 35.00
Duplication Charges	\$ 51.00
SUBTOTAL:	\$86.00

TOTAL: \$ 16,719.27

WHEREFORE, Appellant respectfully requests that the Court award attorneys' fees and expenses in the total amount of **\$ 16,719.27.**

Respectfully submitted,

Date: September 20, 2021

/s/ Richard V. Spataro
Richard V. Spataro
Alexis M. Ivory
Barton F. Stichman
National Veterans Legal
Services Program
1600 K Street, NW, Suite 500
Washington, DC 20006-2833
(202) 621-5675

Counsel for Appellant

CERTIFICATION

As lead counsel in this appeal, I have reviewed the combined billing statement attached as Exhibit A and I am satisfied that it accurately reflects the work performed by all counsel and I have considered and eliminated all time that is excessive or redundant.

/s/ Richard V. Spataro
Richard V. Spataro

EXHIBIT A

NVLSP Staff Hours for Wendell Andrews
Vet. App. No. 19-3227

Date: 4/16/2019 1.2 Staff: Katy S. Clemens
Review and analyze Board of Veterans' Appeals (BVA) decision and identify issues to raise on appeal (0.3); draft memorandum regarding issues to raise on appeal. (0.9)

Date: 4/22/2019 0.2 Staff: Richard V. Spataro
Review memorandum and outline additional issue to raise on appeal.

Date: 5/6/2019 0.4 Staff: Alexis M. Ivory
Teleconference with client regarding BVA decision and issues to raise on appeal, detailed questions regarding same.

Date: 5/13/2019 0.1 Staff: Angela Nedd
Draft Notice of Appeal and Notices of Appearance, and provide to attorney to finalize.

Date: 5/15/2019 0.1 Staff: Angela Nedd
Draft email to Clerk of the Court regarding case initiation, with attachments.

Date: 5/28/2019 0.4 Staff: Angela Nedd
Review correspondence from client regarding case initiation and evaluate same (0.2); finalize retainer agreement and Declaration of Financial Hardship (0.2).

Date: 7/11/2019 0.3 Staff: Christopher Williams
Review correspondence from VA regarding the Record Before the Agency (RBA) and evaluate same.

Date: 7/17/2019 0.2 Staff: Alexis M. Ivory
Teleconference with client regarding case status (0.1); draft email to client about case status (0.1).

Date: 7/21/2019 6.0 Staff: Bryan Medema
Review 4,173-page RBA to ensure for completeness and legibility, through pages 1 to 2,000 (3.0); review RBA to ensure completeness and legibility, through pages 2,000 to end (3.0).

Date: 8/8/2019 0.2 Staff: Alexis M. Ivory
Teleconference with client regarding case status.

NVLSP Staff Hours for Wendell Andrews
Vet. App. No. 19-3227

Date: 8/23/2019 2.3 Staff: Alexis M. Ivory
Review and analyze 4,173-page RBA and take detailed notes for preparation of Rule 33 Summary of the Issues, through page 300.

Date: 8/26/2019 2.3 Staff: Alexis M. Ivory
Review and analyze 4,173-page RBA and take detailed notes for preparation of Rule 33 Summary of the Issues, through page 1,000.

Date: 8/27/2019 5.8 Staff: Alexis M. Ivory
Review and analyze 4,173-page RBA and take detailed notes for preparation of Rule 33 Summary of the Issues, through page 2,000 (2.2); through end (2.1); draft Rule 33 Summary of the Issues (1.5).

Date: 8/28/2019 2.4 Staff: Alexis M. Ivory
Outline Rule 33 Summary of the Issues argument (1.0); Draft Rule 33 Summary of the Issues; add inserts to argument. (1.4)

Date: 9/4/2019 1.9 Staff: Alexis M. Ivory
Finalize Rule 33 Summary of the Issues (0.5); draft email to VA General Counsel and Court Central Legal Staff (CLS) regarding Rule 33 Staff Conference and Summary of Issues, with attachment (0.2); draft and finalize Rule 33 Certificate of Service (0.3); teleconference with client regarding Rule 33 Summary of the Issues (0.2); draft correspondence to client regarding case status and Rule 33 Summary of the Issues/settlement authority, with enclosure (0.7).

Date: 9/4/2019 0.0 Staff: Stacy A. Tromble
Review 33 Summary of the Issues and add inserts to same. **[0.5 eliminated in the exercise of billing judgment]**

Date: 9/18/2019 1.2 Staff: Alexis M. Ivory
Email exchange with CLS attorney regarding Rule 33 Summary of the Issues (0.2); prepare for Rule 33 Staff Conference, including review of Rule 33 Summary of the Issues and relevant evidence (0.4); participate in Rule 33 Staff Conference (0.2); teleconference with client regarding outcome of Rule 33 Staff Conference (0.2); evaluate proposed bases for remand (0.2).

Date: 9/23/2019 0.4 Staff: Alexis M. Ivory
Review settlement, issues regarding same.

NVLSP Staff Hours for Wendell Andrews
Vet. App. No. 19-3227

Date: 10/18/2019 0.4 Staff: Alexis M. Ivory
Email exchange with VA counsel regarding motion for stay of proceedings and settlement (0.1); finalize joint motion for stay of proceedings (0.3).

Date: 11/18/2019 0.6 Staff: Alexis M. Ivory
Email exchange with VA counsel regarding motion for stay of proceedings and settlement (0.1); draft joint motion for stay of proceedings (0.3); further evaluate settlement (0.2).

Date: 11/18/2019 0.0 Staff: Christine Cote Hill
Email exchange regarding status of settlement. **[0.1 eliminated in the exercise of billing judgment]**

Date: 12/3/2019 0.3 Staff: Alexis M. Ivory
Further evaluate settlement, issues regarding same.

Date: 12/3/2019 0.0 Staff: Christine Cote Hill
Conference with lead attorney regarding status of settlement. **[0.2 eliminated in the exercise of billing judgment]**

Date: 12/12/2019 0.6 Staff: Alexis M. Ivory
Begin outlining issues regarding settlement.

Date: 12/12/2019 0.0 Staff: Richard V. Spataro
Email exchange with A. Ivory regarding settlement. **[0.2 eliminated in the exercise of billing judgment]**

Date: 12/16/2019 0.4 Staff: Alexis M. Ivory
Continue outlining issues regarding settlement.

Date: 12/17/2019 0.6 Staff: Alexis M. Ivory
Email exchange with VA counsel regarding motion for extension of time within which to file initial brief, negotiating settlement (0.2); draft motion for extension of time within which to file initial brief, negotiating settlement (0.4).

Date: 1/6/2020 0.4 Staff: Alexis M. Ivory
Teleconference with client regarding case status and detailed questions regarding case status and issues regarding settlement.

NVLSP Staff Hours for Wendell Andrews
Vet. App. No. 19-3227

Date: 1/13/2020 0.0 Staff: Christine Cote Hill
Add inserts to settlement, for A. Ivory. **[0.2 eliminated in the exercise of billing judgment]**

Date: 1/30/2020 0.6 Staff: Alexis M. Ivory
Finalize inserts to settlement (0.2); email exchange with VA counsel regarding motion for stay of proceedings (0.1); finalize motion for stay of proceedings (0.3).

Date: 2/26/2020 0.5 Staff: Alexis M. Ivory
Email exchange with VA counsel regarding settlement, inserts to same (0.3); review VA counsel edits to settlement (0.2).

Date: 3/3/2020 2.2 Staff: Alexis M. Ivory
Email exchange with VA counsel regarding rejection of inserts, expedited proceedings, *Kutscherousky, Fletcher*, second Rule 33 Staff Conference (0.1); review VA counsel email opposing second Rule 33 Staff Conference (0.1); evaluate same (0.2); email exchange with VA counsel regarding opposed second Rule 33 Staff Conference and the rejection of inserts to settlement (0.4); evaluate same (0.4); teleconference with VA counsel regarding rejection of inserts (0.6); draft email to VA counsel regarding second Rule 33 Staff Conference and benefit of same (0.2); teleconference with VA counsel regarding second Rule 33 conference and questions regarding same (0.1); telephone CLS counsel regarding opposed motion for a second Rule 33 Staff Conference (0.1); Begin drafting Opposed Motion for a Second Rule 33 Staff Conference (0.2).

Date: 3/3/2020 0.0 Staff: Christine Cote Hill
Legal advice regarding motion for a second Rule 33 Staff Conference. **[1.0 eliminated in the exercise of billing judgment]**

Date: 3/4/2020 2.6 Staff: Alexis M. Ivory
Teleconference with CLS counsel regarding opposed motion, brief due this date (0.1); email exchange with CLS and VA counsel regarding other relevant AMA cases and evaluate same (0.8); prepare Opposed Motion for Second Rule 33 Conference and Opposed Motion to Stay of Proceedings (0.6); email exchange with VA counsel regarding Second Rule 33 Staff Conference and CLS position; VA counsel informed still opposed (0.5); finalize file Opposed Motions for Stay of Proceedings and a second Rule 33 Staff Conference (0.6).

Date: 3/4/2020 0.0 Staff: Christine Cote Hill
Review email exchanges regarding settlement negotiations, AMA language, relevant motions; edit relevant motions and teleconference regarding finalizing motions. **[1.6]**

NVLSP Staff Hours for Wendell Andrews
Vet. App. No. 19-3227

eliminated in the exercise of billing judgment]

Date: 3/6/2020 2.5 Staff: Alexis M. Ivory
Draft Summary of the Argument (1.6); review Court Order granting request for a Second Rule 33 Staff Conference and Stay of Proceedings in order to provide update to client (0.2); review notes and outlining teleconference with VA counsel regarding rejected inserts to settlement (0.7).

Date: 3/9/2020 0.1 Staff: Alexis M. Ivory
Teleconference with client regarding case status and the granting of second Rule 33 Staff Conference, additional question regarding same.

Date: 3/16/2020 0.1 Staff: Alexis M. Ivory
Review email from CLS counsel regarding conflicting language in settlement.

Date: 3/23/2020 2.0 Staff: Alexis M. Ivory
Email exchanges with VA counsel and CLS counsel regarding disputed inserts (0.4); evaluate same (0.4); Prepare for Rule 33 Staff Conference, appropriate inserts (1.2).

Date: 3/23/2020 0.0 Staff: Christine Cote Hill
Teleconference with lead attorney; legal advice regarding same (1.3); email exchanges regarding same (0.6). **[Entire 1.9 eliminated in the exercise of billing judgment]**

Date: 3/24/2020 0.2 Staff: Richard V. Spataro
Prepare and finalize notice of appearance.

Date: 3/25/2020 0.0 Staff: Richard V. Spataro
Review case notes and inserts, conduct legal research. **[1.0 eliminated in the exercise of billing judgment]**

Date: 3/25/2020 2.0 Staff: Alexis M. Ivory
Email exchange with CLS counsel regarding Rule 33 Staff Conference (0.1); prepare for Rule 33 Staff Conference, including review of settlement and disputed language (0.3); participate in second Rule 33 Staff Conference (1.2); evaluate next steps (0.4).

Date: 3/30/2020 0.4 Staff: Alexis M. Ivory
Review email from CLS counsel regarding inserts to settlement and evaluate same.

NVLSP Staff Hours for Wendell Andrews
Vet. App. No. 19-3227

Date: 4/1/2020 1.2 Staff: Alexis M. Ivory
Email exchange with VA counsel and CLS counsel regarding settlement inserts (0.6);
evaluate same (0.6).

Date: 4/1/2020 0.0 Staff: Christine Cote Hill
Email exchanges regarding proposed bases for remand and AMA settlement inserts.
[0.2 eliminated in the exercise of billing judgment]

Date: 4/2/2020 0.3 Staff: Alexis M. Ivory
Review email from CLS counsel regarding NVLSP proposed inserts in other
agreements (0.1); evaluate same (0.2).

Date: 4/10/2020 0.0 Staff: Barton F. Stichman
Conference with C. Cote Hill and R. Spataro regarding claims, settlement and legal
advice regarding inserts; evaluate next steps. **[1.0 eliminated in the exercise of billing
judgment]**

Date: 4/10/2020 0.0 Staff: Christine Cote Hill
Teleconference with B. Stichman and R. Spataro. **[1.0 eliminated in the exercise of
billing judgment]**

Date: 4/10/2020 0.0 Staff: Richard V. Spataro
Review PACER and review briefs in NOVA Federal Circuit case (0.3); teleconference
with B. Stichman and C. Hill regarding accepting settlement versus briefing (1.0);
teleconference with A. Ivory regarding accepting settlement and schedule call to further
discuss options with B. Stichman and C. Hill (0.3). **[Entire 1.6 eliminated in the
exercise of billing judgment]**

Date: 4/13/2020 0.0 Staff: Richard V. Spataro
Teleconference with B. Stichman, A. Ivory, and C. Hill regarding accepting JMR offer
versus briefing the case. **[1.4 eliminated in the exercise of billing judgment]**

Date: 4/13/2020 0.0 Staff: Christine Cote Hill
Teleconference regarding initial brief and additional inserts to settlement. **[1.0
eliminated in the exercise of billing judgment]**

Date: 4/13/2020 1.3 Staff: Barton F. Stichman
Teleconference with C. Cote Hill, R. Spataro, and evaluate whether to accept additional

NVLSP Staff Hours for Wendell Andrews
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inserts to settlement; *Fletcher/Carter* outstanding.

Date: 4/15/2020 3.0 Staff: Alexis M. Ivory
Draft initial brief, statement of facts (3.0) **[Additional 1.0 eliminated in the exercise of billing judgment]**.

Date: 4/17/2020 0.0 Staff: Alexis M. Ivory
Draft Argument I, initial brief (1.3); draft Argument II, initial brief (1.0). **[Entire 2.3 eliminated in the exercise of billing judgment]**

Date: 4/23/2020 0.9 Staff: Janee LeFrere
Update RBA and legal citations to bolster legal argument (0.4); finalize Table of Authorities. (0.5)

Date: 4/24/2020 0.6 Staff: Christine Cote Hill
Add insert to initial brief argument regarding *Fletcher*/critical examination.

Date: 4/24/2020 0.0 Staff: Richard V. Spataro
Draft inserts to add persuasive value and clarity to legal argument, for A. Ivory. **[2.8 eliminated in the exercise of billing judgment]**

Date: 4/24/2020 2.5 Staff: Barton F. Stichman
Review of and preparation of final inserts to initial brief, Argument I and II (1.2); draft Argument III, initial brief (1.3).

Date: 4/24/2020 0.0 Staff: Alexis M. Ivory
Draft final inserts to Argument, draft final style inserts to argument. **[3.4 eliminated in the exercise of billing judgment]**

Date: 4/28/2020 0.1 Staff: Alexis M. Ivory
Teleconference with client regarding case status.

Date: 5/5/2020 0.5 Staff: Alexis M. Ivory
Finalize correspondence to client regarding initial brief and case status.

Date: 6/1/2020 0.2 Staff: Alexis M. Ivory
Teleconference with client regarding case status (0.1); draft email to client regarding

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case status (0.1).

Date: 6/29/2020 0.6 Staff: Richard V. Spataro
Review 26-page responsive brief for preparation of reply brief.

Date: 8/4/2020 1.0 Staff: Richard V. Spataro
Continue review of 26-page responsive brief for preparation of reply brief argument outline (0.5) **[Additional 1.0 eliminated in the exercise of billing judgment]**; outline reply brief argument (0.5) **[Additional 0.5 eliminated in the exercise of billing judgment]**.

Date: 8/4/2020 0.0 Staff: Barton F. Stichman
Review of VA responsive brief and teleconference with R. Spataro and C. Cote Hill regarding litigation strategy and evaluate same. **[0.5 eliminated in the exercise of billing judgment]**

Date: 8/4/2020 0.0 Staff: Christine Cote Hill
Teleconference regarding reply brief. **[0.5 eliminated in the exercise of billing judgment]**

Date: 8/6/2020 0.2 Staff: Richard V. Spataro
Teleconference with client regarding his knee disability symptoms in preparation for drafting reply brief.

Date: 8/10/2020 4.2 Staff: Richard V. Spataro
Draft reply brief introduction (1.2) **[Additional 1.0 eliminated in the exercise of billing judgment]**; draft reply brief argument IV (3.0).

Date: 8/11/2020 0.0 Staff: Richard V. Spataro
Draft reply brief argument I (2.1); continue drafting reply brief argument I and research regarding same (1.7). **[Entire 3.8 eliminated in the exercise of billing judgment]**

Date: 8/12/2020 1.0 Staff: Richard V. Spataro
Draft reply brief argument II and edit reply brief argument I **[1.6 eliminated in the exercise of billing judgment]**; draft argument III for reply brief and research regarding same (1.0) **[Additional 1.0 eliminated in the exercise of billing judgment]**.

Date: 8/13/2020 0.0 Staff: Richard V. Spataro

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Conduct legal research for reply brief arguments (0.7); continue drafting reply brief argument II (2.2). **[Entire 2.9 eliminated in the exercise of billing judgment]**

Date: 8/14/2020 0.0 Staff: Richard V. Spataro
Continue drafting argument II of reply brief (0.5); continue drafting argument II of reply brief (2.6). **[Entire 3.1 eliminated in the exercise of billing judgment]**

Date: 8/16/2020 0.9 Staff: Richard V. Spataro
Draft argument III and proofread and edits to entire reply brief. (0.9) **[Additional 2.2 eliminated in the exercise of billing judgment]**

Date: 8/21/2020 0.7 Staff: Janee LeFrere
Update RBA and legal citations to bolster legal argument (0.2); finalize Table of Authorities. (0.5)

Date: 8/21/2020 0.3 Staff: Richard V. Spataro
Draft inserts to reply brief to add persuasive value and clarity to legal argument **[2.8 eliminated in the exercise of billing judgment]**; finalize 15-page reply brief **[1.0 eliminated in the exercise of billing judgment]**; teleconference with client regarding reply brief (0.3); update internal file **[0.1 eliminated in the exercise of billing judgment]**.

Date: 9/15/2020 1.3 Staff: Richard V. Spataro
Draft email to VA counsel regarding position on motion for initial review by panel and conduct research regarding motion (0.3) draft motion for initial review by a panel of the Court (1.0) **[Additional 1.6 eliminated in the exercise of billing judgment]**.

Date: 9/15/2020 0.3 Staff: Sunny Chowdhury
Draft and finalize correspondence to client regarding case status.

Date: 9/17/2020 0.0 Staff: Barton F. Stichman
Review of and add inserts to motion for initial review by panel. **[1.0 eliminated in the exercise of billing judgment]**

Date: 9/17/2020 0.3 Staff: Richard V. Spataro
Finalize correspondence to client regarding and case status.

Date: 9/23/2020 0.9 Staff: Richard V. Spataro

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Email exchange with VA counsel regarding proposed bases for remand and inserts to settlement, *Fletcher/Carter* also not included.

Date: 12/11/2020 0.1 Staff: Alexis M. Ivory
Telephone client regarding scheduling of the oral argument.

Date: 12/11/2020 0.0 Staff: Barton F. Stichman
Prepare response regarding related case. **[2.5 eliminated in the exercise of billing judgment]**

Date: 2/10/2021 0.0 Staff: Christine Cote Hill
Begin review of relevant materials for preparation for moot argument. **[1.2 eliminated in the exercise of billing judgment]**

Date: 2/10/2021 4.9 Staff: Richard V. Spataro
Prepare for oral argument, including review of relevant materials, briefing (1.7); prepare for oral argument, including outlining oral argument presentation; review caselaw (2.4); prepare for oral argument, including review of BVA decision and outlining ROP documents (0.8).

Date: 2/11/2021 0.0 Staff: Barton F. Stichman
Oral argument, participate in moot argument, with R. Spataro. **[1.2 eliminated in the exercise of billing judgment]**

Date: 2/11/2021 1.3 Staff: Richard V. Spataro
Prepare for oral argument, including review and analysis of *Kutscherousky* and Veterans Appeals Improvement and Modernization Action of 2017 (1.3); prepare script for oral argument, including review of relevant caselaw and statutes **[2.8 eliminated in the exercise of billing judgment]**; participate in moot argument **[1.2 eliminated in the exercise of billing judgment]**.

Date: 2/11/2021 0.0 Staff: Christine Cote Hill
Review relevant materials for preparation for moot argument (0.3); participate in moot argument (1.2). **[Entire 1.5 eliminated in the exercise of billing judgment]**

Date: 2/17/2021 0.0 Staff: Richard V. Spataro
Prepare for oral argument (1.9); continue preparation for oral argument, including email exchange with attorneys regarding oral argument moot (0.5). **[Entire 2.4 eliminated in the exercise of billing judgment]**

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Date: 2/19/2021 0.0 Staff: Richard V. Spataro
Prepare detailed outline for oral argument (1.9); review case law in preparation for oral argument (1.2). **[Entire 3.1 eliminated in the exercise of billing judgment]**

Date: 2/21/2021 0.0 Staff: Richard V. Spataro
Continue preparation of and revisions to oral argument outline (2.5); continue preparation of and revisions to oral argument outline (4.4); continue preparation of and revisions to oral argument outline (3.3). **[Entire 10.2 eliminated in the exercise of billing judgment]**

Date: 2/23/2021 0.0 Staff: Christine Cote Hill
Review relevant materials for preparation for moot argument (0.3); participate in moot argument (1.5). **[Entire 1.8 eliminated in the exercise of billing judgment]**

Date: 2/23/2021 0.0 Staff: Richard V. Spataro
Review oral argument presentation (0.7); continue conducting legal research, updating oral argument outline, and preparing responses for expected questions from Court (2.4); prepare for and participate in oral argument moot with B. Stichman, C. Hill, and S. Tromble (1.7); review House report on AMA and caselaw, prepare responses to possible questions from Court, and teleconference with B. Stichman regarding same (1.6); continue preparing for oral argument review ROP and create timeline and teleconference with B. Stichman regarding response to possible question from Court (1.3); review oral argument presentation and caselaw (3.5). **[Entire 11.2 eliminated in the exercise of billing judgment]**

Date: 2/23/2021 0.0 Staff: Stacy A. Tromble
Participate in moot, oral argument. **[0.4 eliminated in the exercise of billing judgment]**

Date: 2/23/2021 0.0 Staff: Barton F. Stichman
Review of pleadings for preparation for moot of R. Spataro (0.4); teleconference for R. Spataro moot for oral argument with C. Hill and S. Tromble (1.3); teleconference with R. Spataro regarding AMA legislative history (0.1); research for repeal by implication doctrine (0.2). **[Entire 2.0 eliminated in the exercise of billing judgment]**

Date: 2/24/2021 0.0 Staff: Barton F. Stichman
Prepare for and review oral argument with R. Spataro, S. Tromble, and C. Hill. **[2.5 eliminated in the exercise of billing judgment]**

Date: 2/24/2021 0.0 Staff: Christine Cote Hill

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Review oral argument and post argument teleconference. **[1.4 eliminated in the exercise of billing judgment]**

Date: 2/24/2021 1.3 Staff: Richard V. Spataro
Prepare for oral argument (0.8); participate in oral argument (0.5) **[Additional 1.0 eliminated in the exercise of billing judgment]**.

Date: 2/26/2021 0.2 Staff: Alexis M. Ivory
Teleconference with client regarding oral argument.

Date: 3/1/2021 0.0 Staff: Barton F. Stichman
Add inserts and finalize supplemental authority correspondence. **[1.0 eliminated in the exercise of billing judgment]**

Date: 3/1/2021 1.5 Staff: Richard V. Spataro
Draft supplemental authority correspondence.

Date: 3/9/2021 0.1 Staff: Alexis M. Ivory
Telephone client regarding case status.

Date: 5/28/2021 0.7 Staff: Richard V. Spataro
Review and analyze Panel decision in order to provide update to client.

Date: 6/25/2021 0.9 Staff: Richard V. Spataro
Draft correspondence to client regarding close of case and recommendations regarding decision.

Date: 7/27/2021 0.2 Staff: Alexis M. Ivory
Teleconference with client regarding case status, question regarding case close out.

Date: 8/27/2021 2.3 Staff: Alexandra Gonsman
Draft application for reasonable attorneys' fees and expenses under the Equal Access to Justice Act (EAJA) including recitation of relevant procedural history (1.0); prepare list of itemized hours to be attached as exhibit to EAJA application (1.3).

Date: 9/16/2021 3.0 Staff: Christine Cote Hill
Review and add inserts to application. Review itemized list and eliminate more hours than recommended in billing judgment. (3.0) **[Additional 1.0 eliminated in the**

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exercise of billing judgment]

Date: 9/20/2021 0.0 Staff: Richard V. Spataro
Review elimination of hours in the interest of billing judgment. **[1.0 eliminated in the exercise of billing judgment]**

Date: 9/20/2021 0.6 Staff: Brianna LeFrere
Finalize application for R. Spataro, to include adding detail to application and itemized list.

EXHIBIT B



Databases, Tables & Calculators by Subject

Change Output Options:

From: 1996 ▼ To: 2021 ▼  include graphs include annual averages[More Formatting Options](#) 

Data extracted on: August 11, 2021 (11:51:55 AM)

CPI for All Urban Consumers (CPI-U)

Series Id: CUURS35ASA0, CUUSS35ASA0

Not Seasonally Adjusted

Series Title: All items in Washington-Arlington-Alexandria, DC-VA-MD-WV, all urban consumers, not seasonally adjusted**Area:** Washington-Arlington-Alexandria, DC-VA-MD-WV**Item:** All items**Base Period:** 1982-84=100Download:  [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1996	156.8		158.4		159.0		160.1		160.8		161.2		159.6	158.3	160.8
1997	161.6		161.9		162.1		162.9		163.6		161.8		162.4	162.0	162.8
1998	162.5		163.5		163.6		164.9		165.2		164.5				
1999	165.4		165.9		167.0		168.3		169.8		169.1				
2000	169.8		173.2		172.5		174.8		175.0		175.3				
2001	175.9		177.2		178.0		179.2		180.9		179.5				
2002	180.0		181.9		183.6		184.2		185.8		185.4				
2003	186.3		188.8		188.7		190.2		190.8		190.4				
2004	190.7		192.8		194.1		195.4		196.5		197.2				
2005	198.2		200.4		201.8		202.8		205.6		204.3				
2006	205.6		206.4		209.1		211.4		211.2		210.1				
2007	211.101		214.455		216.097		217.198		218.457		218.331				
2008	220.587		222.554		224.525		228.918		228.871		223.569				
2009	221.830		222.630		223.583		226.084		227.181		226.533				
2010	227.440		228.480		228.628		228.432		230.612		230.531				
2011	232.770		235.182		237.348		238.191		238.725		238.175				
2012	238.994		242.235		242.446		241.744		244.720		243.199				
2013	243.473		245.477		245.499		246.178		247.838		247.264				
2014	247.679		249.591		250.443		250.326		250.634		249.972				
2015	247.127		249.985		251.825		250.992		252.376		251.327		250.664	249.828	251.500
2016	250.807		252.718		254.850		254.305		253.513		253.989		253.422	253.049	253.795
2017	254.495		255.435		255.502		255.518		257.816		257.872		256.221	255.332	257.110
2018	260.219		260.026		261.770		262.016		263.056		261.120		261.445	260.903	261.987
2019	262.304		264.257		265.967		265.170		265.500		265.026		264.777	264.252	265.301
2020	266.433		265.385		265.733		267.287		268.788		268.700		267.157	265.954	268.359
2021	270.535		272.347		275.822		279.099							273.603	

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EXHIBIT C

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'").