

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

KEVIN G. WALLEMAN )  
Appellant, )  
 )  
v. ) CAVC No. 20-7299  
 ) 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 **\$40,551.91**.

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 reversed the Board's determination that Appellant was categorically precluded from obtaining a separate disability rating under DC 5257 and set aside and remanded the Board's August 27, 2020 decision for the Board to properly consider the evaluation criteria of DC 5257 to Appellant's claim under the correct legal standard. See pages 1-16 of the Decision. Mandate issued on August 31, 2022. 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. Walleman 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. Walleman 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. There thus is nothing substantially justified in the Board's failure to properly consider the evaluation criteria of DC 5257 to Appellant's claim under the correct legal standard. 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).

Ten attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Emma Peterson, Danielle M. Gorini, Kevin Medeiros, Christian McTarnaghan, Alec Saxe, Jenna Zellmer, April Donahower, Grace Hurley, Barbara Cook, and Zachary Stolz.<sup>1</sup> Attorney Emma Peterson graduated from Roger

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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

Williams University Law School in 2011 and the *Laffey* Matrix establishes that \$452.00 is the prevailing market rate for an attorney with her experience.<sup>2</sup> Danielle Gorini graduated from Roger Williams University Law School in 2005 and the

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

<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).

*Laffey* Matrix establishes that \$591.00 is the prevailing market rate for an attorney with her experience. Kevin Medeiros graduated from Suffolk University Law School in 2015 and the *Laffey* Matrix establishes that \$388.00 is the prevailing market rate for an attorney with his 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. Alec Saxe graduated from Boston College Law School in 2016 and the *Laffey* Matrix establishes that \$380.00 is the prevailing market rate for an attorney with his experience. Jenna Zellmer graduated from Boston University Law School in 2013 and the *Laffey* Matrix establishes that \$452.00 is the prevailing market rate for an attorney with her experience. April Donahower graduated from Temple University Law School in 2013 and the *Laffey* Matrix establishes that \$452.00 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. 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.

Grace Hurley is a 2020 graduate of Boston University Law School, and at the time some of her work was performed, she was admitted to practice as a non-attorney practitioner. Ms. Hurley has entered her appearance in multiple cases before the Court of Appeals for Veterans Claims. The Court has found that “[I]n formulating an EAJA award to a non-attorney practitioner, once a prevailing market rate is determined for the non-attorney practitioner based on a certain skill level, reputation, and geographic area, that prevailing market rate can be adjusted over time by application of the appropriate percentage increase of the change in the appropriate consumer price index.” See *Apodackis v. Nicholson*, 19 Vet. App. 91 (2005). Therefore, based on Ms. Hurley’s court experience, Appellant seeks attorney’s fees at the rate of \$180.00 per hour for representation services before the Court for her time as a non attorney practitioner before she was admitted to practice law on December 18, 2020. On and after that admittance date, Ms. Hurley’s billing rate as an attorney is \$333.00.

Dalton Chapman 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 Mr. Chapman’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 \$216.41 per hour for Ms. Peterson, Ms. Gorini, Mr. Medeiros, Mr. McTarnaghan, Mr. Saxe, Ms. Zellmer, Ms. Donahower, Mr. Hurley on and after her admittance date, 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 nine attorneys (168.40) results in a total attorney's fee amount of \$36,443.44.

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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 May 2021 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).

Appellant seeks attorney's fees at the rate of \$210.67 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 (8.70) results in a total attorney's fee amount of \$1,832.83.

In addition, Appellant seeks attorney's fees at the rate of \$180.00 per hour for representation services before the Court for Ms. Hurley's time as a non attorney practitioner prior to her admittance date. This rate per hour, multiplied by the number of hours billed (0.40) results in a total fee amount of \$72.00.

Appellant seeks attorney's fees at the rate of \$180.00 per hour for Mr. Chapman's representation services before the Court. This rate per hour, multiplied by the number of hours billed (0.10) results in a total fee amount of \$18.00.

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<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, May 2021, divided by the data from the Midwest Consumer Price Index-U for December 2017 or 230.548.

In addition, Appellant seeks reimbursement for the following expenses:

Filing Fee:	\$50.00
Hotel for oral argument – CMC:	\$858.34
Hotel for oral argument – Jenna:	\$799.86
Travel to / from PA:	\$477.44

Based upon all of the foregoing, the total fee and expenses sought is  
**\$40,551.91.**

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,  
Kevin G. Walleman  
By His Attorneys,  
CHISHOLM CHISHOLM & KILPATRICK  
/s/Zachary M. Stolz  
321 S Main St #200  
Providence, Rhode Island 02903  
(401) 331-6300  
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# Exhibit A

Time from 10/1/2018 to 9/6/2022

Case No. 293812

Client: Walleman, Mr. Kevin G.

			<u>Hours</u>
10/2/2020	EMMA	Reviewed Board decision, researched caselaw, recommended an appeal to CAVC, and proposed legal arguments.	0.60
10/20/2020	DCHAPMAN	Reviewed and submitted notice of appeal, notice of appearance for Z. Stolz, and fee agreement. Received, reviewed, and saed esubmission confirmation to the file.	0.10
11/3/2020	GHURLEY	Received and reviewed e-mails from VA serving BVA decision and transmittal for accuracy; reviewed docket; updated file.	0.10
11/3/2020	GHURLEY	Prepared and e-filed notice of appearance, reviewed confirmation e-mail for accuracy, and updated file	0.20
11/6/2020	KEVIN	Prepared and e-filed notice of appearance, reviewed confirmation e-mail for accuracy, and updated file.	0.10
12/17/2020	GHURLEY	Received and reviewed OGC's Notice of Appearance and updated file.	0.10
12/18/2020	GHURLEY	Received and reviewed RBA certificate of service for accuracy, reviewed docket, and updated file.	0.10
12/30/2020	GHURLEY	Called client and left a voicemail updating him on the status of his case. Note to the file.	0.10
1/8/2021	GHURLEY	Received and reviewed notice to file opening brief for accuracy and content, calculated brief deadline, updated file.	0.10
1/8/2021	GHURLEY	Reviewed RBA R-1-508 and added to casemap for briefing purposes.	1.50
1/13/2021	GHURLEY	Drafted status letter to client.	0.10
2/1/2021	GHURLEY	Received and reviewed Court's PBC order for accuracy, calculated PBC and opening brief deadlines, ensured no PBC conflicts, and updated file.	0.10
2/10/2021	GHURLEY	Reviewed RBA R-509-1088 and added to casemap for briefing purposes.	2.60
2/11/2021	GHURLEY	Drafted outline of arguments for PBC memo and submitted for review.	1.90
2/15/2021	GHURLEY	Completed draft of PBC memo	0.20
2/15/2021	GHURLEY	Prepared final draft of PBC memo for submission. Prepared redacted RBA for submission. E-mailed pbc memo and redacted RBA to VA attorney and CLS attorney. Prepared and e-filed Rule 33 Certificate of Service. Received and reviewed for accuracy email from the Court confirming that Rule 33 Certificate had been filed. Drafted letter to client. Updated client file.	0.80
2/15/2021	GHURLEY	Began draft of PBC memo.	3.00
2/15/2021	KEVIN	Substantive review of GH's draft PBC memo for accuracy of legal arguments, organization, and flow; made necessary edits and revisions; memo to file re: edits/suggestions.	0.70
2/15/2021	KEVIN	Reviewed GH's PBC memo outline against decision and relevant evidence; made necessary revisions and drafted memo to file re: additions/suggestions for memo.	0.80
3/1/2021	GHURLEY	Prepared for and participated in pre-briefing conference. Updated client file.	0.70
3/9/2021	ZACH	Prepared for and participated in discussion of litigation strategy for opening brief discussed VA counsel's position regarding rating philosophy.	0.20
3/17/2021	GHURLEY	Called client and discussed updates on the status of his case.	0.10
4/29/2021	GHURLEY	Began drafting opening brief - statement of the case	2.10
5/9/2021	GHURLEY	Drafted statement of the issues, and first part of argument section of opening brief.	2.00
5/10/2021	GHURLEY	Drafted portion of argument section on separate ratings in opening brief.	1.10
5/10/2021	GHURLEY	Completed drafting statement of the case in opening brief; drafted summary of the argument; drafted conclusion.	2.80
5/10/2021	GHURLEY	Drafted duty to assist portion of argument section in opening brief.	3.00
5/10/2021	GHURLEY	Finalized argument sections in opening brief; contined drafting statement of the case.	3.00

# Exhibit A

Time from 10/1/2018 to 9/6/2022

Case No. 293812

Client: Walleman, Mr. Kevin G.

			<u>Hours</u>
5/12/2021	GHURLEY	Reviewed KM's comments and revisions on draft of opening brief; began incorporating comments and revisions into draft of opening brief.	1.40
5/12/2021	KEVIN	Substantive review of GH's draft opening brief for accuracy of legal arguments, organization, and flow; made necessary edits and revisions; memo to file re: edits/suggestions.	2.60
5/13/2021	GHURLEY	Continued making revisions to draft of opening brief	0.70
5/17/2021	CMC	Review relevant VA examinations report and reviewed revised brief. Edit brief for legal accuracy.	1.30
5/17/2021	GHURLEY	Reviewed CMC's comments and revisions on OB draft; incorporated revisions into next draft of OB; prepared next draft for peer review.	0.20
5/17/2021	GHURLEY	Incorporated additional suggested revisions into final draft of brief; prepared final draft of brief for filing; checked citations to record and authority, e-filed opening brief; received and reviewed confirmation email for accuracy; updated client's file.	2.90
7/16/2021	GHURLEY	Received and reviewed OGC's motion for extension of time to file brief for accuracy and content; updated client's case file.	0.10
7/16/2021	GHURLEY	Received and reviewed e-mail from VA counsel requesting consent to file unopposed motion for extension of time to file brief; responded with position; updated file.	0.10
7/21/2021	GHURLEY	Received and reviewed CAVC order granting OGC's motion to extend time to file brief for accuracy and content; updated file.	0.10
9/1/2021	GHURLEY	Reviewed Appellee's brief, took notes on key points of argument, and researched case law cited to; drafted memo to file; updated client file.	1.80
9/2/2021	GHURLEY	Returned client's phone call; discussed updates on the status of his case.	0.10
9/16/2021	GHURLEY	Discuss litigation strategy for reply brief.	0.70
10/14/2021	GHURLEY	Reviewed case notes and conducted additional caselaw research to prepare for drafting reply brief; began drafting first portion of argument in reply brief.	2.80
10/17/2021	GHURLEY	Completed first portion of argument in reply brief; drafted second portion of argument section; began drafting third portion of argument in reply brief.	3.00
10/18/2021	ALEC	Began review of GH's draft reply brief for accuracy of legal arguments, citations, flow, and strength of arguments; made necessary revisions.	1.00
10/19/2021	ALEC	Finished reviewing and editing GH's draft reply brief.	0.50
10/19/2021	GHURLEY	Reviewed AS's edits and comments on draft of reply brief; conducted additional caselaw research in preparation of adding to draft of reply brief; began editing draft of reply brief	2.00
10/20/2021	GHURLEY	Continued making revisions and additional drafting on draft of reply brief	1.90
10/21/2021	GHURLEY	Continued making edits to reply brief	0.50
10/27/2021	CMC	Review of revised, final draft of reply brief	0.70
10/28/2021	GHURLEY	Final revisions to reply brief, checked citations to record and authority; and e-filed; received and reviewed confirmation email for accuracy; updated client's file.	1.90
11/1/2021	GHURLEY	Received e-mail from client; responded to the same with a case status update.	0.10
11/9/2021	GHURLEY	Reviewed e-mail serving OGC record of proceedings; reviewed ROP for completeness and internal notes; determined there was no dispute with ROP; prepared and e-filed ROP response and updated file.	0.80
11/10/2021	GHURLEY	Received notice of assignment of case to Judge Allen; reviewed notice for accuracy; updated file.	0.10
12/15/2021	GHURLEY	Received and reviewed order to panel, reviewed pleadings, and memo to the file regarding same; updated client file.	0.80
12/20/2021	GHURLEY	Called client; discussed updates on the status of client's case.	0.10
12/20/2021	GHURLEY	Received and reviewed notice of order setting oral argument. Updated client file.	0.10

# Exhibit A

Time from 10/1/2018 to 9/6/2022

Case No. 293812

Client: Walleman, Mr. Kevin G.

			<u>Hours</u>
12/27/2021	GHURLEY	Received and reviewed OGC's motion for clarification for accuracy and content; updated client's case file.	0.10
1/5/2022	CMC	Review Court's response to VA's motion for clarification.	0.10
1/19/2022	CMC	Draft and file notice of appearance. Update client file.	0.10
1/19/2022	CMC	Email VA counsel about discuss case and oral argument.	0.20
1/24/2022	CMC	Call counsel with no response. Send follow up email.	0.10
1/24/2022	CMC	Discussions with VA counsel about case and possible resolution	0.30
1/24/2022	CMC	Review case in anticipation of discuss with VA counsel this morning.	0.60
2/3/2022	CMC	Email VA about possibility of settlement.	0.10
2/3/2022	CMC	Receive email from VA that settlement seems unlikely.	0.10
2/3/2022	CMC	Email VA counsel about potential for remand in this case.	0.10
2/3/2022	CMC	Receive and reviewed email and phone call from VA about case not settling.	0.10
2/3/2022	CMC	Receive and review email from Court about possibility of settlement. Update client file.	0.10
2/4/2022	JENNA	Drafted and filed notice of appearance, reviewed docket; updated file.	0.20
2/10/2022	CMC	Receive and review Court's updated oral argument order. Update client file.	0.10
2/27/2022	CMC	Begin to review seminal cases in ortho law.	2.30
2/27/2022	CMC	Begin to prepare for strategy sessions regarding oral argument. Review pleadings. Begin to outline argument.	2.60
2/28/2022	BARBARA	Review pleadings and assess possible issues	1.50
2/28/2022	CMC	Review rating decision from client to determine effect on appeal.	0.20
2/28/2022	GHURLEY	Called client; discussed case status updates.	0.10
2/28/2022	GHURLEY	Called client; discussed updates on the status of his case.	0.10
2/28/2022	GHURLEY	Received e-mail from client regarding status of his case; responded to same.	0.10
3/3/2022	CMC	Review case, and pleadings filed in case stayed pending the Walleman decision.	0.60
3/4/2022	CMC	Discuss oral argument strategy at strategy meeting	0.80
3/7/2022	CMC	Begin to review case law to prepare for initial oral argument walkthrough.	2.50
3/8/2022	CMC	Continue to prepare for first official walkthrough for oral argument. Review factual aspects of case. Review supportive caselaw to prepare.	2.30
3/9/2022	CMC	Begin to outline case strategy.	2.90
3/11/2022	BARBARA	Prepare for and participate in walk-through	1.00
3/11/2022	CMC	Participate in walk through for oral argument. Draft memo to the file re: same	2.40
3/11/2022	ZACH	Prepared for and participated in walk through for oral argument. Preparation included review of pleadings, record, and cited cases. Participation was to discuss strategy and best arguments.	3.00
3/12/2022	CMC	Begin to outline arguments in preparation for first moot.	1.60
3/13/2022	CMC	Continue to prepare for first moot. Review all mem dees citing Lyles.	3.00
3/14/2022	BARBARA	Prepare for moot by reading briefs and cases (including Copeland, Lyles, Esteban)	1.00
3/14/2022	CMC	Reivew Lyles oral argument for Court's concerns and VA's position.	1.30

# Exhibit A

Time from 10/1/2018 to 9/6/2022

Case No. 293812

Client: Walleman, Mr. Kevin G.

			<u>Hours</u>
3/14/2022	CMC	Review all briefs filed. Review relevant / important case law. Continue to review and revise oral argument outline in anticipation of first moot.	2.50
3/14/2022	CMC	Continue to review and revise oral argument outline. Continue to prepare presentation for first moot.	2.80
3/15/2022	BARBARA	Participate in moot	1.00
3/15/2022	CMC	Continue to review and revise oral argument presentation. Review cases for distinction and comparisons.	2.30
3/15/2022	CMC	Participate in first moot. Memo to the file re: same. Review weakness of case.	2.50
3/15/2022	CMC	Continue to review case after first moot. Add to oral argument outline.	3.00
3/16/2022	CMC	Continue to prepare for oral argument. Review history of M21-1 pre and post Lyles.	2.20
3/17/2022	APRIL	Reviewed and suggested edits to draft 30(b) submission	0.50
3/17/2022	CMC	Draft and file 30(b) letter.	0.40
3/17/2022	CMC	Continue to prepare for oral argument and review cases.	0.80
3/19/2022	CMC	Continue to prepare for second moot. Review oral argument outline. Continue to review seminal cases and record.	2.50
3/19/2022	CMC	Prepare for second moot. Review oral argument outline. Edit oral outline. Review important language cases. Draw analogies and distinctions.	3.00
3/20/2022	BARBARA	Review and comment on CMC's draft outline for oral argument; and his summary of cases after reviewing Lyles.	1.20
3/20/2022	CMC	Continue to review other parts of case to be prepared to discuss them at argument.	2.50
3/20/2022	CMC	Continue to review pleadings filed. Review other arguments in case aside from Court's interest, functional loss under 5260 and DTA argument made.	3.00
3/21/2022	BARBARA	Participate in strategy meeting re: legal theories, approach, controlling nature of Lyles compared to Esteban, maximizing benefits. Review and comment on revised outline.	1.20
3/21/2022	CMC	Continue to prepare for second moot. Revise and review oral argument outline. Highlight important quotes.	1.10
3/21/2022	CMC	Review all important cases in case to be familiar with them for argument. Review record for factual development for argument.	3.00
3/22/2022	BARBARA	Review and comment on revised outline, suggest changes to organization, note how maximizing benefits fits in; suggest more detail in request for relief	0.60
3/22/2022	BARBARA	Review pleadings to prepare for moot, participate in moot and post-moot discussion	1.20
3/22/2022	CMC	Participate in second moot and draft memo to the file re: same	1.00
3/22/2022	CMC	Final preparation for second moot.	2.90
3/22/2022	GHURLEY	Called client; discussed case status updates.	0.10
3/22/2022	ZACH	Prepared for and participated in second full moot. Preparation included review of relevant caselaw and regulations. Participation was as "judge" asking questions and participating in discussion of oral argument strategy.	2.90
3/23/2022	CMC	Travel to State College from RI for argument.	7.30
3/23/2022	JENNA	Drive to Penn State	7.30
3/24/2022	CMC	Participate in pre-oral argument activities.	1.50
3/24/2022	CMC	Final preparation for oral argument. Review briefs, oral argument outline, and cases.	2.30
3/24/2022	CMC	Participate in oral argument.	3.00
3/24/2022	JENNA	Pre oral argument events: travel to law school, careers in veterans law panel	1.50
3/24/2022	JENNA	Participated in oral argument	3.00

# Exhibit A

Time from 10/1/2018 to 9/6/2022

Case No. 293812

Client: Walleman, Mr. Kevin G.

			<u>Hours</u>
3/25/2022	CMC	Travel from State college to home.	7.00
3/25/2022	JENNA	Travel from Penn state to Rhode Island	7.00
3/29/2022	CMC	Discuss oral argument with client.	0.30
6/10/2022	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
6/13/2022	CMC	Review favorable precedential decision. Update client file.	0.50
6/17/2022	CMC	Telephone call with Mr. Walleman about decision.	0.30
7/5/2022	CMC	Receive and review judgment. Update client file.	0.20
7/14/2022	GHURLEY	Received e-mail from client and responded to same	0.20
7/15/2022	GHURLEY	Drafted and sent e-mail to client.	0.10
7/15/2022	GHURLEY	Drafted status letter to client pertaining to medical records.	0.20
7/15/2022	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
8/31/2022	GHURLEY	Received phone call from client; discussed updates on the status of client's case.	0.10
8/31/2022	GHURLEY	Received and reviewed notice of Mandate from Court for content and accuracy; updated file.	0.10
8/31/2022	GHURLEY	Called client to discuss case status updates; left voicemail for client requesting return phone call.	0.10
9/6/2022	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
9/6/2022	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.50
9/6/2022	ZACH	Reviewed EAJA Application for proofreading purposes and to ensure billing accuracy.	0.40

## Timekeeper Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
<b>ALEC</b>	<b>1.5</b>	<b>\$ 216.41</b>	<b>\$ 324.62</b>
<b>APRIL</b>	<b>0.5</b>	<b>\$ 216.41</b>	<b>\$ 108.21</b>
<b>BARBARA</b>	<b>8.7</b>	<b>\$ 210.67</b>	<b>\$ 1,832.83</b>
<b>CMC</b>	<b>84.4</b>	<b>\$ 216.41</b>	<b>\$ 18,265.00</b>
<b>DANIELLE</b>	<b>1.7</b>	<b>\$ 216.41</b>	<b>\$ 367.90</b>
<b>DCHAPMAN</b>	<b>0.1</b>	<b>\$ 180.00</b>	<b>\$ 18.00</b>
<b>EMMA</b>	<b>0.6</b>	<b>\$ 216.41</b>	<b>\$ 129.85</b>
<b>GHURLEY</b>	<b>48.8</b>	<b>\$ 216.41</b>	<b>\$ 10,560.81</b>
<b>JENNA</b>	<b>19.0</b>	<b>\$ 216.41</b>	<b>\$ 4,111.79</b>
<b>KEVIN</b>	<b>4.2</b>	<b>\$ 216.41</b>	<b>\$ 908.92</b>

# Timekeeper Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
<b>ZACH</b>	<b>7.7</b>	<b>\$ 216.41</b>	<b>\$ 1,666.36</b>
GHURLEY	0.4	\$180.00	\$72.00
Expenses:	Filing Fee:	\$50.00	
	Hotel for oral argument - CMC:	\$858.34	
	Hotel for oral argument - Jenna:	\$799.86	
	Travel to / from PA:	\$477.44	
		Total:	\$40,551.91

## 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'").