

**IN THE UNITED STATES COURT OF APPEALS  
FOR VETERANS CLAIMS**

STEPHANIE L. WATKINS,	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. 20-5612
	)	
DENIS MCDONOUGH,	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

**APPELLANT’S APPLICATION FOR AN AWARD OF REASONABLE  
ATTORNEY FEES AND EXPENSES UNDER 28 U.S.C. § 2412(D)**

Pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. §2412(d), Appellant moves this Court for an award of reasonable attorney fees and expenses. Appellant seeks an award in the amount of \$31,973.26 for litigating the merits of this appeal and drafting this petition. In support of this motion, Appellant submits that: (1) he is entitled to an award of attorney fees and expenses under EAJA, 28 U.S.C. § 2412(d); and, (2) an award of \$31,973.26 is reasonable and appropriate.

**PRELIMINARY STATEMENT**

To address the financial burden of litigation with the federal government, Congress passed in 1980 the Equal Access to Justice Act (hereinafter “EAJA”). *See* Pub. L. No. 96-481, tit. II, §204(a), (c), 94 Stat. 2327, 2329 (1980). The primary rationale for its enactment was to “eliminate for the average person the financial disincentive to challenge unreasonable government actions.” *Commissioner, I.N.S. v. Jean*, 110 S. Ct. 2316, 2321 (1990). Under the EAJA:

a court shall award to a prevailing party other than the United States fees and other expenses...incurred by that party in a civil action (other than fees sounding in tort), including proceedings for judicial review of agency action, brought against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C.S. § 2412(d)(1)(A).

Initially, this Court held that the EAJA did not apply to appeals before the CAVC. *See McArthur Jones v. Derwinski* and *Karnas v. Derwinski*, 2 Vet. App. 231 (1992). However, in 1992 Congress acted to expressly make the EAJA applicable to the CAVC, rendering the pending appeal to the U.S. Court of Appeals for the Federal Circuit of the *McArthur Jones v. Derwinski* and *Karnas v. Derwinski*, *supra*, matter moot. *See* Federal Courts Administration Act of 1992, Pub. L. No. 102-572, tit. V, § 506, 106 Stat. 4513 (Oct. 29, 1992). Congress amended section 2412(d)(2)(F) to add the United States Court of Veterans Appeals (now Court of Appeals for Veterans Claims) to the definition of Courts authorized to make awards under the EAJA. *Id.*

Accordingly, the EAJA amendment clearly applies in this case. The amendment applies “to any case pending before the United States Court of Veterans Appeals on the date of the enactment of this Act, to any appeal filed in that court on or after such date in the United States Court of Appeals for the Federal Circuit.” Pub. L. No. 102-572, tit. V, §506(b), *supra*. The present case was pending in the United States Court of Appeals for Veterans Claims after October 29, 1992, when the EAJA amendment became effective, and as such the EAJA clearly applies.

## SUMMARY OF PROCEEDINGS

On April 21, 2020, the Board issued a decision that denied the Appellant's claim for entitlement to service connection for bipolar disorder. On June 2, 2022, the Court issued a precedential Opinion in which it vacated the Board's April 2020 decision, and remanded the aforementioned claim.<sup>1</sup> In so remanding, the Court determined that the Board had not provided an adequate statement of reasons or bases with respect to the question of whether Appellant was on authorized travel to active duty for training (ACDUTRA) when her bipolar disorder manifested. More specifically, the Court determined that the Board's denial of Appellant's claim based on its assessment that she had deviated from her travel itinerary as reflected in her Advance Order was inadequate because (1) the Board did not explain how it determined that Appellant's Advance Orders required her to follow a specific itinerary; and (2) the Board did not discuss the Joint Travel Regulations that concern Appellant's travel even though the Advance Orders specifically refer to them and the Board's rationale was focused on travel. 38 U.S.C. § 7104(d)(1); *Gilbert v. Derwinski*, 1 Vet.App. 49, 57 (1999). In addition, the Court provided additional guidance to the Board, finding that, should Appellant raise the matter on remand, the Board should consider the relevancy of decisions of the United States Court of Appeals for the Armed Forces including *United States v. Cline*, 29 M.J. 83 (C.M.A. 1989) (now the CAAF), which established a bright-line rule for when a service member is deemed to be on ACDUTRA for the purposes of being subject to the Uniform Code of

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<sup>1</sup> The Court's Opinion was of the Panel of Chief Judge Bartley and Judges Pietsch and Allen. By Order dated June 7, 2022, the Opinion was amended.

Military Justice (UCMJ).<sup>2</sup> The Court remarked, “[a]fter all, if appellant was subject to military discipline under the UCMJ 1 minute past midnight on June 2, 1997, it seems the Board should consider that fact” because “[i]t would be remarkable if appellant were considered to have been on active duty by the service department for the purpose of imposing discipline, but not considered to have been on active duty by VA for the purposes of awarding benefits.”

## ARGUMENT

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

To be deemed a “prevailing party”, a litigant must achieve success “on any significant issue in litigation which achieve[d] some of the benefit...sought in bringing the suit.” *Sbalala v. Schaefer*, 113 S. Ct. 2625, 2632 (1993). In addition, this Court has held that the “prevailing party” requirement is met “when a remand is obtained.” *Stillwell v. Brown*, 6 Vet. App. 291, 300 (1994); See *Swiney v. Gober*, 14 Vet. App. 65, 68-70 (2000). In making this determination “substance should prevail over form.” *Devine v. Sutermeister*, 733 F.2d 892 (Fed. Cir. 1984). It is sufficient that the Court make some material determination in the appeal that is favorable to the appellant. See *Lematta v. Brown*, 8 Vet. App. 504, 508. (1996).

In addition, the present case is distinguishable from cases where “prevailing party” status did not attach. In *Vaughn v. Principi*, 336 F. 3d 1360 (Fed. Cir. 2003), the court addressed the issue of a remand to an administrative agency in light of legislation enacted while the appeal was pending. *Id.*, at 1366. The court observed that such a situation does not constitute securing

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<sup>2</sup> *Cline*, 29 M.J. at 86 (holding that “appellant was subject to the Uniform Code of Military Justice and court-martial jurisdiction ‘from the date[ ]’ he was ordered to appear for training . . . [which] began one minute past midnight on April 25, 1987”).

relief on the merits for prevailing party purposes. *Id.* In *Vaughn*, that case involved a remand for re-adjudication solely in light of the enactment of the VCAA – as opposed to based on VA error. *See Vaughn v. Principi*, 15 Vet. App. 277, 280 (2001); *see also Flemming v. Principi*, 16 Vet. App. 52 (2002).

This issue was further clarified and addressed in *Former Employees of Motorola Ceramic Products v. United States*, 336 F. 3d 1360 (Fed. Cir. 2003). There, the court observed that “where a 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 1360.

In this case, unlike the facts in *Vaughn, supra*, the Court of Appeals for Veterans Claims issued a precedential Opinion vacating and remanding the Board of Veterans Appeals decision because the Board had not provided an adequate statement of reasons or bases with respect to the question of whether Appellant was on authorized travel to active duty for training (ACDUTRA) when her bipolar disorder manifested. More specifically, the Court determined that the Board’s denial of Appellant’s claim based on its assessment that she had deviated from her travel itinerary as reflected in her Advance Order was inadequate because (1) the Board did not explain how it determined that Appellant’s Advance Orders required her to follow a specific itinerary; and (2) the Board did not discuss the Joint Travel Regulations that concern Appellant’s travel even though the Advance Orders specifically refer to them and the Board’s rationale was focused on travel. 38 U.S.C. § 7104(d)(1); *Gilbert*, 1 Vet.App.at 57. In addition, the Court provided additional guidance to the Board, finding that, should Appellant raise the

matter on remand, the Board should consider the relevancy of decisions of the United States Court of Appeals for the Armed Forces including *United States v. Cline*, 29 M.J. 83 (C.M.A. 1989) (now the CAAF), which established a bright-line rule for when a service member is deemed to be on ACDUTRA for the purposes of being subject to the Uniform Code of Military Justice (UCMJ). The Court remarked, “[a]fter all, if appellant was subject to military discipline under the UCMJ 1 minute past midnight on June 2, 1997, it seems the Board should consider that fact” because “[i]t would be remarkable if appellant were considered to have been on active duty by the service department for the purpose of imposing discipline, but not considered to have been on active duty by VA for the purposes of awarding benefits.”

Appellant submits that such action is tantamount to an enforceable judgment on the merits and materially changes the legal relationship between the parties. Specifically, the Board’s final denial of the veteran’s claim was vacated by the Court via a precedential Opinion.

## **II. APPELLANT IS ELIGIBLE TO RECEIVE AN AWARD UNDER 28 U.S.C. § 2412(2).**

Pursuant to 28 U.S.C. § 2412(d), a prevailing party must not be: (i) an individual whose net worth exceeded \$2,000,000.00 at the time the litigation began, nor (ii) a business entity whose net worth exceeded \$7,000,000.00 and which had more than 500 employees at the time the litigation began. 28 U.S.C. § 2412(d)(2)(B)(i), (ii).

Appellant had a net worth *under* \$2,000,000.00 on the date this action was commenced, and he is clearly not a business entity. (*See* Exhibit A, Certification of Net Worth). Therefore, Appellant is a person eligible to receive an award under the EAJA.

### III. THE GOVERNMENT'S POSITION WAS NOT SUBSTANTIALLY JUSTIFIED.

To be considered “substantially justified” under the EAJA, the government must show that its position was “justified to a degree that could satisfy a reasonable person,” i.e., has a reasonable basis in both law and fact. *Pierce v. Underwood*, 108 S. Ct. 2541, 2549-50 (1988). Once the appellant alleges in the fee petition, as in this case, that the VA’s position was not substantially justified, then the burden to prove substantial justification shifts to the Secretary. See *Stillwell*, 6 Vet. App. at 301; *Cook v. Brown*, 6 Vet. App. 226, 236 (1994); *Felton v. Brown*, 7 Vet. App. 276, 279 (1994). To satisfy this burden, this Court has stated that “[t]he VA must demonstrate the reasonableness in law and fact of the position of the VA in a matter before the Court, and of the action or failure to act by the VA in a matter before the VA, based upon the judicial precedent and VA policy with respect to such position, and action or failure to act, as reflected in the record on appeal and the filing of the parties before the Court.” *Stillwell*, 6 Vet. App. at 302.

This Court further explained substantial justification in *Moore v. Gober*, 10 Vet. App. 436 (1997). In *Moore*, the Court held that in order “[t]o determine whether the Secretary’s position was ‘reasonable’ during the administrative proceedings, the Court looks to the relevant determinative circumstances, including the state of the law at the time of the BVA decision.” *Id.* at 440 (citing *Bowyer v. Brown*, 7 Vet. App. 549, 552 (1995)).

In this case, the government’s position leading up to, and throughout this litigation was not “substantially justified” because the Board did not provide an adequate statement of reasons or bases with respect to the question of whether Appellant was on authorized travel to active duty for training (ACDUTRA) when her bipolar disorder manifested. More

specifically, the Court determined that the Board's denial of Appellant's claim based on its assessment that she had deviated from her travel itinerary as reflected in her Advance Order was inadequate because (1) the Board did not explain how it determined that Appellant's Advance Orders required her to follow a specific itinerary; and (2) the Board did not discuss the Joint Travel Regulations that concern Appellant's travel even though the Advance Orders specifically refer to them and the Board's rationale was focused on travel. 38 U.S.C. § 7104(d)(1); *Gilbert*, 1 Vet.App. at 57. In addition, the Court provided additional guidance to the Board, finding that, should Appellant raise the matter on remand, the Board should consider the relevancy of decisions of the United States Court of Appeals for the Armed Forces including *United States v. Cline*, 29 M.J. 83 (C.M.A. 1989) (now the CAAF), which established a bright-line rule for when a service member is deemed to be on ACDUTRA for the purposes of being subject to the Uniform Code of Military Justice (UCMJ). The Court remarked, "[a]fter all, if appellant was subject to military discipline under the UCMJ 1 minute past midnight on June 2, 1997, it seems the Board should consider that fact" because "[i]t would be remarkable if appellant were considered to have been on active duty by the service department for the purpose of imposing discipline, but not considered to have been on active duty by VA for the purposes of awarding benefits."

Although the facts of the instant case make clear the substantially unjustified position of the government, the EAJA under Section 2412(d)(1)(A) make a party ineligible if "special circumstances make an award unjust." Courts have rarely found such "special circumstances" to exist, and many of those cases involved a prevailing party's "unclean hands" and "notorious and repeated violations of the law." *Doria v. Brown*, 8 Vet. App. 157, 162 (1995). Accordingly,



it is clear that the Secretary does not meet the heavy burden of proving that “special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). See *Devine v. Sutermeister*, 733 F.2d 892, 895 (Fed. Cir. 1984). Courts have narrowly interpreted the “special circumstances” exception so as not to frustrate the Congressional purpose for enacting the EAJA, i.e., to ensure that litigants have access to the courts when litigating against the Government. See *Taylor v. United States*, 815 F.2d 249, 253 (3d Cir. 1987). Therefore, no reason or special circumstance exists to justify denial of this Fee Petition.

#### **IV. THE COURT SHOULD AWARD APPELLANT REASONABLE ATTORNEY FEES AND EXPENSES OF \$31,973.26.**

Pursuant to the EAJA a court “shall” award “fees and other expenses” when the other requirements of the statute have been satisfied. 28 U.S.C. § 2412(d)(1)(A). The statutory definition of “fees and other expenses” includes reasonable attorney fees.” 28 U.S.C. § 2412(d)(2)(A).

As such, the starting point for the statutory award of “reasonable” attorney fees would be “the number of hours reasonably expended multiplied by a reasonable hourly rate” plus litigation expenses. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Furthermore, provided that the itemized statement of fees is not, on its face, unreasonable or questionable, the Court will not require the production of the contemporaneous time sheets. See *Cohen v. Brown*, 8 Vet. App. 5 (1995). Notwithstanding, counsel is admonished to exclude from fee requests hours that are “excessive, redundant, or otherwise unnecessary”. See *Hensley*, 461 U.S. at 434, quoting *Copeland v. Marshall*, 641 F.2d 880, 891 (D.C. Cir. 1980)(en banc). Accordingly, the exercise of “billing judgment” is an important consideration. *Id.*; see also *Elczyn v. Brown*, 7 Vet. App. 170,

176 (1994); *but see Vidal v. Brown*, 8 Vet. App. 488, 494 (1996)(rejecting the typical VA reasons for opposing the reasonableness of the hours).

***A. Hours Reasonably Expended***

The hours billed by appellant's counsel represent a reasonable amount of time that a reasonably prudent attorney would charge for a similar matter. Attached hereto as Exhibit B is the undersigned counsel's declaration regarding the fees for services rendered in the instant matter. It should be noted that counsel is not seeking payment for administrative and clerical duties such as photocopying, faxing, filing, and other miscellaneous tasks invariably incurred in the prosecution of any matter. Appellant's counsel respectfully submits that a reasonable attorney, using prudent billing discretion, would seek payment for all items included in Exhibit B attached hereto.

***B. Reasonable Hourly Rate***

Pursuant to the EAJA, the amount of fees awarded is to be predicated upon the prevailing market rates for similar matters but "shall not be awarded in excess of \$125.00 per hour unless the Court determines that an increase in the cost of living" is necessary. The undersigned appellant's counsel, Eric A. Gang, states that his prevailing market rate is \$520 per hour pursuant to the *Laffey* Matrix, which is attached hereto as Exhibit C. Attorney Gideon J. Miller's prevailing market rate is \$460 per hour pursuant to the *Laffey* Matrix. (See Exhibit C).

***C. The EAJA Statutory Cap of \$125.00 Should be Adjusted Upward to Reflect the Increase in the Cost of Living.***

Pursuant to 28 U.S.C. § 2412(d)(2)(A)(ii), attorneys may establish that an increase in the cost of living warrants an increase in the \$125.00 per hour statutory cap. See *Pierce v.*

*Underwood*, 108 S. Ct. 2541, 2553 (1988) (referring to a cap of \$75.00 per hour “adjusted for inflation.”). An increase for cost of living is generally allowed. *Johnston v. Sullivan*, 919 F.2d 503, 508-10 (8<sup>th</sup> Cir. 1990); *Coup v. Heckler*, 839 F.2d 313, 320 (3d Cir. 1987).

In ruling that an appellant’s attorney may apply for a fee increase above the statutory cap, this Court in *Elyzyn v. Brown*, 7 Vet. App. 170 (1994) observed that an increase would be based on the Consumer Price Index as published by the Bureau of Labor Statistics. *Id.* at 179-181. For calculation purposes, this Court has suggested a single rate of compensation calculated from March 1996 to a mid-point in the litigation, which is the month that the appellant files the initial brief or joint motion for remand. *See Chiu v. United States*, 948 F.2d 711 (Fed. Cir. 1991); *Elyzyn*, 7 Vet. App. 181. In this case, Appellant filed her initial brief in January 2021. The Appellant, nevertheless, selects July 2017, as the mid-point date for calculating the CPI increase. Applying this methodology, Appellant’s counsel should be compensated at the rate of \$201.23 per hour.<sup>3</sup> A copy of the CPI-U upon which the calculations are based can be located on the Department of Labor’s website.

Based upon the foregoing, Appellant’s counsel respectfully requests a fee of \$31,973.26 based upon 160.9 hours of work and \$28.50 in expenses.

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<sup>3</sup> Counsel respectfully urges that the Court should increase the \$125.00 per hour cap by the general inflationary index in the cost of living since March of 1996, as reflected by the CPI-U for the New York-Northern New Jersey-Long Island urban region. Pursuant to the most current report from the Bureau of Labor Statistics, the CPI-U for the aforesaid urban region rose 60.991 percent between March 1996 and July 2017. To arrive at the rate of \$201.23 per hour, the following calculations were performed: subtracting the CPI-U for July 2017 (268.051) from that of March 1996 (166.5), and dividing the result (101.551) by the CPI-U for March 1996. This equals .60991592, which represents the increase between March 1996 and July 2017. This was then multiplied by the statutory rate (\$125.00), resulting in an increase of \$76.23. This, in turn, was added to the \$125.00 statutory rate to arrive at the inflation-adjusted rate of \$201.23 per hour.

Respectfully submitted,

/s/ Eric A. Gang  
**ERIC A. GANG, ESQ.**  
GANG & ASSOCIATES, LLC  
1 Edgeview Drive, Suite 2C  
Hackettstown, NJ 07840  
(908) 850-9999

Counsel for Appellant

Exhibit A

**CERTIFICATE OF NET WORTH**

I, Eric A. Gang, of Hackettstown, New Jersey, hereby declare that at no time during the course of his appeal to the Court of Appeals for Veterans Claims, did Appellant, Stephanie L. Watkins, have a net worth of, or in excess of, \$2,000,000.00.

/s/ Eric A. Gang  
**Eric A. Gang**

**Exhibit B**

**DECLARATION OF APPELLANT'S COUNSEL,**

**ERIC A. GANG**

In support of Appellant's application for attorney's fees under 28 U.S.C. § 2412(d), I Eric A. Gang hereby declare as follows:

1. I am an attorney licensed to practice in the States of New Jersey, and am admitted to practice before the United States Court of Appeals for Veterans Claims. I have been admitted to practice since 1998. Gideon J. Miller is an attorney licensed in the Commonwealth of Massachusetts and State of New York and admitted to practice before the United States Court of Appeals for Veterans Claims. He has been admitted to practice since 2012. Mr. Miller performed work in the instant matter in association with the undersigned.
2. I have represented Stephanie L. Watkins in Vet. App. No. 20-5612 without charge.
3. In preparing the EAJA application in the aforesaid case, I accessed the web site maintained by the United States Department of Labor, Bureau of Labor Statistics, Office of Consumer Pricing Indexing. From that source I determined the Consumer Price Index for the New York-Northern New Jersey-Long Island urban region rose by 76.53% between March 1996, when the EAJA was amended, and June 2021, which is the mid-point in the litigation chosen for purposes of the calculations.

Attached is a statement of the exact service rendered and expenses incurred in the representation of the Appellant in this appeal:

## Exhibit C

### LAFFEY MATRIX – 2014-2015

Years (Rate for June 1 – May 31, based on prior year's CPI-U)

#### Experience

20+ years	520
11-19 years	460
8-10 years	370
4-7 years	300
1-3 years	255
Paralegals & Law Clerks	150

#### *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. The matrix is intended to be used 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 does **not** apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. ' 2412(d).
2. This matrix is based on the hourly rates allowed 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). It is commonly referred to by attorneys and federal judges in the District of Columbia as the "Laffey Matrix" or the "United States Attorney's Office Matrix." The various "brackets" in the column headed "Experience" refer to the years following the attorney's graduation from law school, and are intended to correspond to "junior associates" (1-3 years after law school graduation), "senior associates" (4-7 years), "experienced federal court litigators" (8-10 and 11-19 years), and "very experienced federal court litigators" (20 years or more). Thus, the "1-3 years" bracket is generally applicable to attorneys in their first, second, and third years after graduation from law school, and the "4-7 years" bracket generally becomes applicable on the third anniversary of the attorney's graduation (*i.e.*, at the beginning of the fourth year following law school). *See Laffey*, 572 F. Supp. at 371; *but cf. EPIC v. Dep't of Homeland Sec.*, No. 11-2261, \_\_\_ F. Supp. 2d \_\_\_, 2013 WL 6047561, \*6 -\*7 (D.D.C. Nov. 15, 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).

3. The hourly rates approved in *Laffey* were for work done principally in 1981-82. The matrix begins with those rates. See *Laffey*, 572 F. Supp. at 371 (attorney rates) & 386 n.74 (paralegal and law clerk rate). The rates for subsequent yearly periods were determined by adding the change in the cost of living for the Washington, D.C. area to the applicable rate for the prior year, and then rounding to the nearest multiple of \$5 (up if within \$3 of the next multiple of \$5). The result is subject to adjustment if appropriate to ensure that the relationship between the highest rate and the lower rates remains reasonably constant. Changes in the cost of living are measured by the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.
4. Use of an updated Laffey Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated Laffey Matrix prepared by the United States Attorney's Office as evidence of prevailing market rates for litigation counsel in the Washington, D.C. area. See *Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n.14, 1109 (D.C. Cir. 1995), cert. denied, 516 U.S. 1115 (1996). Most lower federal courts in the District of Columbia have relied on the United States Attorney's Office Matrix, rather than the so-called "Updated Laffey Matrix," as the "benchmark for reasonable fees" in this jurisdiction. *Miller v. Holzmann*, 575 F. Supp. 2d 2, 18 n.29 (D.D.C. 2008) (quoting *Pleasants v. Ridge*, 424 F. Supp. 2d 67, 71 n.2 (D.D.C. 2006)); see, e.g., *Berke v. Bureau of Prisons*, 942 F. Supp. 2d 71, 77 (D.D.C. 2013); *Heller v. District of Columbia*, 832 F. Supp. 2d 32, 40-49 (D.D.C. 2011); *American Lands Alliance v. Norton*, 525 F. Supp. 2d 135, 150 (D.D.C. 2007). But see *Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 14-15 (D.D.C. 2000). The United States Attorney's Office does not use the "Updated Laffey Matrix" to determine whether fee awards under fee shifting statutes are reasonable.



**Certification**

As lead counsel I have reviewed the combined billing statement 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.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ Eric A. Gang\_\_\_\_\_.

**Eric A. Gang**

# Gang & Associates LLC

1 Edgeview Dr., Ste. 2C  
Hackettstown, NJ  
07840

**Stephanie L. Watkins Saxton**  
3110 Pebble Beach Rd  
Apt 3  
Conway AR 72034

**Date:** 9/6/2022  
**File Number:** 1688/003  
**Invoice Number:** 7482

**Re:** Watkins, Stephanie L.

<u>Date</u>	<u>Initials</u>	<u>Description of Service</u>	<u>Hours</u>	<u>Amount</u>
08/11/2020	EG	Draft and prepare notice of appeal & Notice of Appearance as Lead Counsel; E-filed same along with Declaration of Financial Hardship & OGC Consent. Also drafted detailed letter to client explaining process at CAVC.	0.30	60.37
08/31/2020	GM	Drafting Notice of Appearance as Co-Counsel; E-Filing Same	0.20	40.25
09/04/2020	GM	Phone call with client re filing of Notice of Appearance, giving status on claim, and outlining CAVC process.	0.10	20.12
10/09/2020	GM	Phone call with client re her request for a status update.	0.10	20.12
10/29/2020	GM	Initial review of RBA documents (pgs. 1-362), reviewing and analyzing for accuracy, completeness, and ensuring accuracy of evidence relied upon in adjudicative decisions, and determining relevance of incomplete or illegible pages; creating coherent system.	0.70	140.86
10/29/2020	GM	Continued initial review of RBA documents (pgs. 363-891), reviewing and analyzing for accuracy, ensuring accuracy of evidence relied upon in adjudicative decisions, and determining relevance of any incomplete or illegible pages; creating coherent system and notes.	0.60	120.74
10/30/2020	GM	Continued initial review of RBA documents (pgs. 892-1321), reviewing for accuracy, completeness, and ensuring accuracy of evidence relied upon in adjudicative decisions, and determining relevance of any incomplete or illegible pages; creating coherent system.	0.60	120.74
10/30/2020	GM	Completed initial review of RBA documents (pgs. 1322-1828/end), reviewing for accuracy, completeness, and ensuring accuracy of evidence relied upon in adjudicative decisions, and determining relevance of any incomplete or illegible pages; creating coherent system.	0.70	140.86
12/01/2020	GM	Began chronological merit review of RBA (pgs. 1-451) in preparation to draft assessment memorandum pursuant to Rule 33, drafting notes as required, and analyzing for potential additional issues.	2.70	543.32
12/01/2020	GM	Continued chronological merit review of RBA (pgs. 452-947), in preparation to draft summary of issues, taking notes as needed, and analyzing for potential additional issues.	2.70	543.32
12/01/2020	GM	Continued chronological merit review of RBA (pgs. 948-1405), in preparation to draft summary of issues, taking notes as needed, and analyzing for potential additional issues.	2.60	523.20
12/02/2020	GM	Completed chronological merit review of RBA (pgs. 1406-1828/end) in preparation to draft summary of issues, taking notes as needed, and reviewing for potential additional issues.	2.40	482.95
12/04/2020	GM	Began drafting assessment memorandum (pgs. 1-3), summarizing issues pursuant to Rule 33.	2.70	543.32

12/04/2020	GM	Continued drafting memorandum (pgs. 3-7), summarizing issues pursuant to Rule 33.	2.90	583.57
12/07/2020	GM	Completed drafting memorandum (pgs. 7-10) summarizing issues pursuant to Rule 33.	3.00	603.69
12/08/2020	GM	Drafting email correspondence to opposing counsel re submission of Rule 33 Issue Memorandum	0.10	20.12
12/08/2020	GM	Draft and prepare certificate of service for Rule 33 summary; e-filing same.	0.20	40.25
12/08/2020	GM	Drafting correspondence to client re: assessment and analysis of issues to present for conference.	0.20	40.25
12/08/2020	GM	Telephone call to Client to discuss R.33 Memo and arguments made therein.	0.20	44.13
12/22/2020	GM	Briefing Conference - Secretary will defend	0.40	80.49
12/22/2020	GM	Drafting correspondence to client re: briefing conference and status.	0.10	20.12
01/06/2021	GM	Research and review of regulations, relevant case law, treatise info and Westlaw searches re: Dept of Defense's interpretation of "authorized travel to" active duty for training. See JTR (04/01/2020), par. 020302-A, par. 050205-A(1)-A(2); DOD 7000.14-R (12/31/1996) par. 020502, par. 020505, Table 2-4, par. 040403; JFTR (1998) par. U5160.	3.00	603.69
01/06/2021	GM	Continued research and review of regulations, relevant case law, treatise info and Westlaw searches re: Dept of Defense's interpretation of "authorized travel to" for active duty for training. See See JTR (04/01/2020), par. 020302-A, par. 050205-A(1)-A(2); DOD 7000.14-R (12/31/1996) par. 020502, par. 020505, Table 2-4, par. 040403; JFTR (1998) par. U5160.	2.10	422.58
01/07/2021	GM	Research and review of relevant case law, treatise info and Westlaw searches re: meaning of "authorized travel to" and/or "active duty status" for the purpose of active duty for training. See U.S. v. Pearson, 13 M.J. 140 (C.M.A. 1982); United States v. Cline, 29 M.J. 83 (C.M.A. 1989); U.S. v. Phillips, 58 M.J. 217 (C.A.A.F. 2003); United States v. Morita, 73 M.J. 548 (A.F.Ct.Crim.App.2014) (affirmed in part, reversed in part); U.S. v. Morita, 74 M.J. 116 (C.A.A.F. 2015).	3.00	603.69
01/07/2021	GM	Continued research and review of relevant case law, treatise info and Westlaw searches re: meaning of "authorized travel to" and/or "active duty status" for the purpose of active duty for training. See U.S. v. Pearson, 13 M.J. 140 (C.M.A. 1982); United States v. Cline, 29 M.J. 83 (C.M.A. 1989); U.S. v. Phillips, 58 M.J. 217 (C.A.A.F. 2003); United States v. Morita, 73 M.J. 548 (A.F.Ct.Crim.App.2014) (affirmed in part, reversed in part); U.S. v. Morita, 74 M.J. 116 (C.A.A.F. 2015).	2.30	462.83
01/11/2021	GM	Began preparation and drafting brief, pgs. 1-4 (Statement of the Issues through Statement of the Facts)	2.80	563.44
01/11/2021	GM	Continued preparation and drafting of brief, pgs. 4-6 (Legal Argument: Summary of the Argument)	2.10	422.58
01/12/2021	GM	Continued drafting and preparation of brief, pgs. 6-10 (Legal Argument: Point I. Standard of Review and Relevant Statutory/Regulatory Framework)	2.90	583.57
01/13/2021	GM	Continued drafting and preparation of brief, pgs. 10-13 (Legal Argument: Point II)	3.00	603.69
01/14/2021	GM	Continued drafting and preparation of brief, pgs. 14-16 (Legal Argument: Point III)	2.90	583.57
01/14/2021	GM	Continued drafting and preparation of brief, pgs. 17-19 (Legal Argument: Point III)	1.80	362.21
01/15/2021	GM	Continued drafting and preparation of brief, pgs. 19-21 (Legal Argument: Point III)	3.00	603.69
01/15/2021	GM	Continued drafting and preparation of brief, pgs. 21-23 (Legal Argument: Point III)	1.70	342.09
01/17/2021	GM	Continued drafting and preparation of brief, pgs. 23-26 (Legal Argument: Point III)	2.60	523.20
01/17/2021	GM	Completed drafting and preparation of brief, pgs. 26-27 (Legal Argument: Point IV through Conclusion)	1.20	241.48

Date	Code	Description	Hours	Amount
01/18/2021	GM	Ensured proper completion of table of content and table of authorities	1.30	No Charge
01/20/2021	GM	Vetting and finalizing Appellant's brief; preparing for filing	0.70	140.86
01/20/2021	GM	E-filed Appellant's Brief	0.10	20.12
01/20/2021	GM	Drafting correspondence to client re: filing of brief w/ overview and analysis of arguments w/ explanation and enc.	0.10	20.12
01/20/2021	GM	Telephone call to Client re filing of opening brief.	0.10	20.12
04/28/2021	EG	Receipt and review of joint stay motion; execution of same and email to opposing counsel.	0.10	20.12
04/28/2021	EG	Telcon with opposing counsel re: proposed JMR.	0.10	20.12
04/29/2021	EG	Intraoffice conference re: proposed JMR terms.	0.30	66.20
05/03/2021	EG	Receipt and review of appearance of Omar Yousaf, Esq.	0.10	20.12
05/04/2021	EG	Email exchange with Omar Yousaf re: status of proposed JMR.	0.10	20.12
05/07/2021	GM	Telephone conference with client re: status of appeal, terms of proposed JMR, and negotiation process for proposed JMR.	0.20	44.13
05/07/2021	GM	Telephone conference with opposing counsel re: terms of proposed JMR.	0.20	40.25
05/10/2021	GM	Drafting proposed revisions to Secretary's JMR.	0.50	100.62
05/19/2021	GM	Drafted and sent email to opposing counsel containing proposed edits to JMR.	0.10	20.12
05/21/2021	EG	Intraoffice conference re: terms of the JMR	0.30	60.37
05/21/2021	GM	Receipt and review of email from opp. Counsel; conducted research of cases in which CAVC relied on non-VA regulations when outcome determinative; draft reply re JMR terms.	0.50	100.62
06/01/2021	GM	Telephone conference with client re: status, continuation of stay thru 6/28, and reasons for same.	0.20	40.25
06/07/2021	GM	Receipt and review of email from opposing counsel re basis for not including Cline in JMR offer; Internal discussions between Attorneys re opposing counsel's email.	0.50	No Charge
06/08/2021	GM	Drafting email correspondence to opposing counsel re: turning down JMR offer and seeing the case through at the Court.	0.10	20.12
07/02/2021	GM	Drafting email correspondence to opposing counsel re: Appellant's need for a 45-day extension for reply brief.	0.10	No Charge
07/12/2021	GM	Draft and prepare Appellant's motion for a 45-day extension of time to file her reply brief; e-filing same.	0.20	No Charge
07/26/2021	GM	Continued review and analysis of Secretary's brief; taking notes, and preparing outline of response.	2.60	523.20
07/26/2021	GM	Review and analysis of Secretary's brief; taking notes, and preparing outline of response.	2.70	595.78
07/27/2021	GM	Continued research and review of relevant case law, treatise info and Westlaw searches re: whether VA must adopt the laws of other Agencies if bound by statute, regulation, or precedential decision from OCG: G.C. Prec. 12-91; Procopio v. Wilkie, 913 F.3d 1371 (Fed.Cir.2019); Stover v. Mansfield, 21 Vet.App. 485 (2007); Winter v. Principi, 4 Vet.App. 20 (1993); Bullock v. Shinseki, 2009 WL 2372086; Spencer v. West, 13 Vet.App. 376 (2000).	1.80	362.21
07/27/2021	GM	Research and review of relevant case law, treatise info and Westlaw searches re: whether VA must adopt the laws of other Agencies if bound by statute, regulation, or precedential decision from OCG: G.C. Prec. 12-91; Procopio v. Wilkie, 913 F.3d 1371 (Fed.Cir.2019); Stover v. Mansfield, 21 Vet.App. 485 (2007); Winter v. Principi, 4 Vet.App. 20 (1993); Bullock v. Shinseki, 2009 WL 2372086; Spencer v. West, 13 Vet.App. 376 (2000).	3.00	603.69
07/29/2021	GM	Began preparation and drafting of reply brief, pgs. 1-3.	2.80	563.44
07/29/2021	GM	Continued drafting and preparation of reply brief, pgs. 3-6.	2.70	543.32
07/30/2021	GM	Continued drafting and preparation of reply brief, pgs. 6-8.	2.40	482.95
07/30/2021	GM	Continued drafting and preparation of reply brief, pgs. 8-10.	2.20	442.71

08/02/2021	GM	Research and review of relevant case law, treatise info and Westlaw searches re: interpretation of statutes where one statute appears to render the other meaningless. See Roper v. Nicholson, 20 Vet.App. 173 (2006), aff'd 240 F.App'x 422 (Fed.Cir.2007); POM Wonderful LLC v. Coca-Cola Co., 573 U.S. 102, 134 S.Ct. 2228, 189 L.Ed. 141 (2014); Princess Cruises, incorporate company. V. United States, 201 F.3d 1352 (Fed.Cir.2000).	1.10	221.35
08/03/2021	GM	Continued drafting and preparation of reply brief, pgs. 10-13.	3.00	603.69
08/03/2021	GM	Continued drafting and preparation of reply brief, pgs. 13-14.	1.30	261.60
08/04/2021	GM	Completed drafting and preparation of reply brief, pgs. 14-15.	2.10	422.58
08/18/2021	EG	Review and edit reply brief.	1.10	221.35
08/18/2021	GM	Vetting and finalizing Appellant's Reply Brief; preparing for filing	2.30	462.83
08/18/2021	GM	E-filing Appellant's Reply Brief	0.10	20.12
08/18/2021	GM	Telephone conference with client re: filing of Appellant's Reply Brief.	0.10	20.12
08/19/2021	GM	Receipt and review of the Record of Proceedings to ensure completeness and accuracy; E-filing Appellant's Statement accepting the ROP.	0.50	100.62
08/19/2021	GM	Draft correspondence to client enclosing Reply Brief.	0.10	20.12
09/10/2021	GM	Phone call with client re status-update and process moving forward.	0.20	40.25
09/22/2021	GM	Receipt and review of Court's Order to submit Supplemental Memoranda.	0.20	40.25
10/04/2021	GM	Receipt and review of email from opposing counsel asking if Appellant is amenable to a joint motion for an extension of time to respond to Court's Order to file Supplemental Memoranda; draft reply marking Appellant as unopposed.	0.10	20.12
10/05/2021	GM	Receipt and review of Secretary's draft of Joint Motion for an Extension of Time to respond to Court's Order to Submit Supplemental Memoranda; draft email to opposing counsel containing signed copy.	0.10	20.12
10/06/2021	GM	Research and review of relevant case law, treatise info and Westlaw searches re: Federal Circuit's & Court's practice of issue exhaustion in the veterans benefits system following Sims v. Apfel, 530 U.S. 112, 120 S.Ct. 2080, 147 L.Ed.2d 80 (2000), with particular emphasis on Scott v. McDonald, 789 F.3d 1375 (Fed.Cir.2015) and Robinson v. Peake, 21 Vet.App. 545 (2008).	3.00	603.69
10/06/2021	GM	Research and review of relevant case law, treatise info and Westlaw searches re: whether, similar to Constitutional matters, issue exhaustion should be prohibited when the argument concerns one of solely statutory interpretation. See McKart v. United States, 395 U.S. 185, 89 S.Ct. 1657, 23 L.Ed.2d 195 (1969); Touche Ross & Co v. S.E.C., 609 F.2d 570 (2d Cir. 1979).	2.10	422.58
10/07/2021	GM	Research and review of relevant case law, treatise info and Westlaw searches re: what types of issues constitute the "sphere of routine objections" within VA case law and whether questions of statutory interpretation would fall into this category. See Carr v. Saul, 141 S.Ct. 1352 (2021); Scott v. McDonald, 789 F.3d 1375 (Fed.Cir.2015); Rizzo v. Shinseki, 580 F.3d 1288 (Fed.Cir.2009); Sickles v. Shinseki, 643 F.3d 1362 (Fed.Cir.2011); Dickens v. McDonald, 814 F.3d 1359 (Fed.Cir.2016); Bria v. Wilkie, 33 Vet.App. 228 (2021); Crumlich v. Wilkie, 31 Vet.App. 194 (2019); Martinez v. Wilkie, 31 Vet.App. 170 (2019)	2.80	563.44
10/08/2021	GM	Phone call with client re Court's Order to draft Supplemental Memoranda of Law and the issue to be considered.	0.20	40.25
10/08/2021	GM	Began drafting Supplemental Memorandum of Law, pgs. 1-3.	2.80	563.44
10/11/2021	GM	Continued drafting Supplemental Memorandum of Law, pgs. 3-6.	2.50	503.08

10/11/2021	GM	Continued drafting Supplemental Memorandum of Law, pgs. 6-8.	2.50	503.08
10/12/2021	GM	Completed drafting Supplemental Memorandum of Law, pgs. 8-10/end.	3.00	603.69
11/08/2021	GM	Telephone conference with client re: status of appeal.	0.10	20.12
11/24/2021	GM	Receipt and review of emails from opposing counsel seeking to exceed 10-page limit for Supplemental Memo of Law; Intraoffice consultation between Appellant's counsel and draft reply emails marking Appellant as opposed to ensure equity in arguments presented.	0.30	60.37
11/29/2021	GM	E-filed Appellant's Supplemental Memorandum of Law in response to Court's 9/22/21 Order	0.10	20.12
11/30/2021	GM	Receipt & review of Secretary's response to Court's 9/22/2021 Order	0.30	60.37
11/30/2021	GM	Receipt & review of Supplemental Record of Proceedings.	0.30	60.37
11/30/2021	GM	Telephone call to client re filing of the Supplemental Memo of Law in response to the Court's 9/22/21 Order.	0.20	40.25
12/01/2021	GM	Drafting email correspondences with opposing counsel re motion for initial review by panel.	0.20	No Charge
12/06/2021	GM	Draft and prepare motion for initial review by panel; e-filing same.	0.70	140.86
12/06/2021	GM	Receipt and review of Court Order granting motion for Initial Review by Panel	0.10	20.12
12/07/2021	GM	Receipt and review of Court's Order submitting case to panel of Chief Judge Bartley, Judge Pietsch, and Judge Allen.	0.10	20.12
12/13/2021	GM	Receipt and review of Court's Order setting Oral Argument for February 9, 2022, at 1 pm.	0.10	20.12
12/22/2021	GM	Telephone conference with client re: assignment of case to panel and oral argument on 2/9/2022.	0.20	40.25
01/17/2022	EG	Telcon with client re: returned her call and answered her questions about the case and the process.	0.30	60.37
01/25/2022	GM	Prepared outline of pertinent facts to know and began compiling summaries of dispositive cases in preparation for oral argument.	3.00	603.69
01/25/2022	GM	Reviewed file and began compiling outline of oral argument presentation with key phrases to highlight.	2.70	543.32
01/26/2022	GM	Continued to prepare for oral argument by completing outline for presentation.	2.80	563.44
01/26/2022	GM	Continued to compile case summaries of dispositive case in preparation for oral argument.	2.10	422.58
01/26/2022	DY	Drafted and filed notice of appearance as co-counsel	0.20	No Charge
01/27/2022	GM	Practiced oral argument presentation in preparation of moot.	3.00	603.69
01/28/2022	EG	Client called to discuss issues in the case.	0.10	20.12
01/28/2022	EG	Oral argument preparation; reviewing secretary's arguments.	2.10	422.58
01/28/2022	EG	Oral argument prep; moot court and analysis of potential questions.	1.00	201.23
01/28/2022	GM	Conducted moot oral argument.	1.50	301.84
01/28/2022	EG	Voicemail exchange with client re: new date for oral argument.	0.10	20.12
02/02/2022	GM	Conducted roundtable discussion in preparation for Oral Argument.	2.10	422.58
02/08/2022	GM	Practiced presentation and reviewed notes in anticipation of moot oral argument.	1.90	382.34
02/09/2022	GM	Conducted moot oral argument	1.50	301.84
02/16/2022	GM	Telephone conference with client re: status of appeal and preparations for oral argument.	0.20	40.25
02/21/2022	GM	Practiced presentation and reviewed notes in anticipation of moot oral argument.	0.90	181.11
02/21/2022	GM	Conducted moot oral argument.	1.10	221.35
02/22/2022	GM	Practiced presentation and reviewed notes in anticipation of moot oral argument	0.80	160.98
02/25/2022	GM	Conducted moot oral argument	1.00	201.23

02/28/2022	GM	Draft correspondence to client re: date, time, and how to watch the oral argument.	0.20	40.25
03/01/2022	GM	Pre-oral argument conference.	0.50	100.62
03/01/2022	GM	Conducted moot oral argument.	1.00	201.23
03/03/2022	GM	Conducted moot oral argument	1.20	241.48
03/07/2022	GM	Phone call to client re: reminder about oral argument and ability to view it live on Court's youtube live channel.	0.20	44.13
03/07/2022	GM	Conducted Moot Oral Argument	1.50	301.84
03/08/2022	GM	Reviewed notes and practiced in preparation for oral argument.	2.20	442.71
03/08/2022	GM	Conducted Oral Argument before panel of Judges Bartley, Pietsch & Allen.	2.50	503.08
03/08/2022	GM	Telephone conference with client re initial thoughts on oral argument conducted.	0.20	40.25
03/09/2022	GM	Receipt and review of email from opposing counsel with settlement offer on DTA basis; intraoffice discussion between Counsel re the offer terms.	0.30	60.37
03/09/2022	GM	Telephone conference with client re: Secretary's offer of post-oral argument JMR based on the DTA; Client isn't interested.	0.20	40.25
03/10/2022	GM	Drafting email correspondence to opposing counsel rejecting settlement offer on DTA basis.	0.20	40.25
06/02/2022	GM	Receipt and review of Court's decision.	0.30	60.37
06/02/2022	GM	Drafting correspondence to client re: Court's decision	0.20	40.25
06/02/2022	GM	Extended telcon with client re: Court's decision.	0.30	60.37
06/02/2022	GM	Drafting extended correspondence to client re: closure of CAVC case w/ explanations as to basis of remand and w/ instructions on remand w/ enc.	0.20	40.25
08/08/2022	GM	Drafting and compiling time sheet; conducting final accounting in preparation to draft EAJA application.	1.30	261.60
08/08/2022	GM	Drafting and preparation of EAJA application; review and edit; e-filing same.	1.30	261.60
09/06/2022	EG	Review and revise EAJA application.	0.80	160.98
		<b>Total Fees</b>	<b>160.90</b>	<b>\$31,944.76</b>

**Expenses**

02/05/2019 Papers, faxes and Postages 28.50

**TOTAL NEW CHARGES****\$31,973.26****STATEMENT OF ACCOUNT**

Prior Balance	11,792.12
Payments	-11,792.12
Current Fees	31,944.76
Current Expenses	28.50

**AMOUNT DUE AND OWING TO DATE****\$31,973.26****Payments**

<b>Date</b>	<b>Ref #</b>	<b>Description</b>	<b>Amount</b>
1/28/2020	4039-07931113	Payment on Account	11,792.12