

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

DONALD P. LINCOLN, JR.	)	
Appellant,	)	
	)	
v.	)	CAVC No. 22-2617
	)	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 **\$18,860.76**.

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 this case, the parties agreed to a joint motion to terminate the appeal. Appellee agreed to the reinstatement of a 30% rating for knee instability under DC 5257 from February 6, 2017. See pages 1-6 of the Joint Motion to Terminate. Mandate issued on December 13, 2023. 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. Lincoln 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. Lincoln 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 was not reasonable, either in law or in fact, and accordingly the Secretary's position was not substantially justified at the administrative stage in this case. The parties

agreed to a joint motion to terminate the appeal. 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 *Elcyszyn*, 7 Vet. App. at 176-177).<sup>1</sup>

Eight attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Brittani Howell, Grace Hurley, David Remillard, Jenna Zellmer, Kaitlyn Degnan, Jordan Broadbent, Danielle M. Gorini, and Zachary Stolz.<sup>2</sup> Attorney Brittani Howell graduated from Syracuse University Law School

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<sup>1</sup> The attorneys' fees are calculated using *Speigner v. Wilkie*, 31 Vet. App. 42 (2019), wherein this Court held that the Consumer Price Index- U of the location of the residence of the attorney must be used.

<sup>2</sup> "There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the same work and are being compensated for the distinct contribution of each lawyer." *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1301 (11th Cir. 1988); see also *Baldrige 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.*

in 2017 and the *Laffey* Matrix establishes that \$508.00 is the prevailing market rate for an attorney with her experience. Grace Hurley graduated from Boston University Law School in 2020 and the *Laffey* Matrix establishes that \$413.00 is the prevailing market rate for an attorney with her experience. David Remillard graduated from Roger Williams University Law School in 2018 and the *Laffey* Matrix establishes that \$508.00 is the prevailing market rate for an attorney with his experience. Jenna Zellmer graduated from Boston University School of Law in 2013 and the *Laffey* Matrix establishes that \$733.00 is the prevailing market rate for an attorney with her experience. Kaitlyn Degnan graduated from Syracuse University School of Law in 2017 and the *Laffey* Matrix establishes that \$508.00 is the prevailing market rate for an attorney with her experience. Jordan Broadbent graduated from Syracuse University School of Law in 2021 and the *Laffey* Matrix establishes that \$413.00 is the prevailing market rate for an attorney with her

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*Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) holding modified by *Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). “Careful preparation often requires collaboration and rehearsal[.]” *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998). As demonstrated in Exhibit A, each attorney involved in the present case provided a distinct, and non-duplicative contribution to the success of the appeal. See *Baldrige*, 19 Vet.App. at 237 (“An application for fees under EAJA where multiple attorneys are involved must also explain the role of each lawyer in the litigation and the tasks assigned to each, thereby describing the distinct contribution of each counsel.”).

experience. Danielle Gorini graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$829.00 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 \$829.00 is the prevailing market rate for an attorney with his experience.

Olga Tretyakova, Dalton Chapman, and Geoffery LaForce are paralegals 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 is \$180.00 per hour. Therefore, Appellant seeks fees at the rate of \$180.00 per hour for representation services before the Court for the paralegals.<sup>3</sup>

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<sup>3</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*

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$236.79 per hour for Ms. Howell, Ms. Hurley, Mr. Remillard, Ms. Zellmer, Ms. Degnan, Ms. Broadbent, Ms. Gorini and Mr. Stolz for representation services before the Court.<sup>4</sup> This rate per hour, multiplied by the number of hours billed for these eight attorneys (86.40) results in a total attorneys' fee amount of \$20,458.66.

Appellant seeks fees at the rate of \$180.00 per hour for the paralegals' representation services before the Court. This rate per hour, multiplied by the number of hours billed (4.00) results in a total fee amount of \$720.00.

Based upon all of the foregoing, the total fee is **\$21,178.66**. However, in the exercise of billing judgment, Appellant will voluntarily reduce the total fee by 10

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*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).

<sup>4</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 November 2022 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).



hours for some of Mr. Remillard's time and seek a reduced fee of **\$18,810.76**.

In addition, Appellant seeks reimbursement for the following expense:

Filing Fee: \$50.00

Based upon all of the foregoing, Appellant seeks a total fee and expense in the amount of **\$18,860.76**.

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

**Exhibit A****Time from 01/01/1900 to 12/20/2023****Case No. 731704****Client: Donald P Lincoln Jr**

			<b><u>Hours</u></b>
4/13/2022	Kaitlyn Degnan	*Attorney Reviewed Board Decision, researched caselaw, recommended an appeal to CAVC, and proposed legal arguments.	0.60
5/2/2022	Dalton Chapman	*Paralegal Reviewed and submitted notice of appeal, notice of appearance for Z. Stolz, and fee agreement. Received and posted esubmission confirmation to the file.	0.10
5/4/2022	Dalton Chapman	*Paralegal Reviewed docket to ensure appeal was processed. Updated client's file.	0.10
5/9/2022	Jordan Broadbent	*Attorney Prepared and e-filed notice of appearance, reviewed docket, received and reviewed confirmation e-mail for accuracy, and updated file.	0.20
6/1/2022	Jordan Broadbent	*Attorney Received and reviewed e-mails from VA serving BVA decision and transmittal for accuracy; reviewed docket; updated file.	0.10
6/22/2022	Jordan Broadbent	*Attorney Received and reviewed OGC's Notice of Appearance and updated file.	0.10
7/6/2022	Jordan Broadbent	*Attorney Received and reviewed RBA certificate of service for accuracy, reviewed docket, and updated file.	0.10
7/12/2022	Geoffery LaForce	*Paralegal Reviewed RBA pp. 2956-3236 for dispute purposes.	0.60
7/12/2022	Geoffery LaForce	*Paralegal Reviewed RBA pp. 1-2955 for dispute purposes.	3.00
7/25/2022	Olga Tretyakova	*Paralegal Prepared the Status Letter to the client.	0.20

## Exhibit A

7/26/2022	Jordan Broadbent	*Attorney Received and reviewed notice to file opening brief for accuracy and content, calculated brief deadline, updated file.	0.10
7/29/2022	Jordan Broadbent	*Attorney Received and reviewed Court's PBC order for accuracy, calculated PBC and opening brief deadlines, ensured no PBC conflicts, and updated file.	0.10
8/4/2022	David Remillard	*Attorney Finished reviewing BVA decision and began reviewing RBA for briefing purposes pp. 1 to 120.	1.50
8/5/2022	David Remillard	*Attorney Review of RBA to prepare statement of issues pp. 121 to 875.	2.00
8/9/2022	David Remillard	*Attorney Review of RBA for briefing purposes pp. 2013 to 2249.	1.00
8/9/2022	David Remillard	*Attorney Review of RBA for briefing purposes pp. 876 to 2012.	3.00
8/10/2022	David Remillard	*Attorney Continued drafting statement of issues; continued research of relevant caselaw and regulations.	1.80
8/10/2022	David Remillard	*Attorney Research of relevant caselaw; began drafting statement of issues.	0.90
8/10/2022	David Remillard	*Attorney Continued drafting statement of the issues.	0.80
8/11/2022	David Remillard	*Attorney Completed draft of statement of issues.	0.40
8/11/2022	David Remillard	*Attorney Continued researching caselaw and regulations regarding the propriety of reductions and severance; continued drafting statement of issues.	3.00
8/12/2022	Jordan Broadbent	*Attorney drafted pbc letter, sent letter and memo to client	0.10

## Exhibit A

8/12/2022	David Remillard	*Attorney Completed PBC memo; served to VA and CLS counsels; prepared and e-filed Rule 33 certificate; received and reviewed confirmation e-mail for accuracy; updated file.	1.00
8/23/2022	Jordan Broadbent	*Attorney called client, answered case questions drafted memo to file	0.50
8/26/2022	Jordan Broadbent	*Attorney called client explained PBC and remand offer and next steps, drafted memo to file	0.20
8/26/2022	Jordan Broadbent	*Attorney recieved email updating docket that conference was held, updated file	0.10
8/26/2022	Jordan Broadbent	*Attorney Prepared for and participated in PBC with VA and CLS counsels; drafted memo to file summarizing outcome; updated file.	1.00
10/13/2022	David Remillard	*Attorney Began drafting opening brief.	1.60
10/14/2022	David Remillard	*Attorney Continued drafting statement of the case for opening brief; continued reviewing record.	1.80
10/14/2022	David Remillard	*Attorney Continued drafting statement of the case for opening brief.	2.20
10/18/2022	David Remillard	*Attorney Finished drafting statement of the case for opening brief.	2.20
10/19/2022	David Remillard	*Attorney Continued drafting opening brief.	0.80
10/20/2022	David Remillard	*Attorney Finished draft of argument for opening brief.	1.60
10/21/2022	David Remillard	*Attorney Edited draft of opening brief.	0.90

## Exhibit A

10/25/2022	David Remillard	*Attorney Editing draft of OB.	0.40
10/31/2022	Kaitlyn Degnan	*Attorney Began substantive review of opening brief.	0.50
11/1/2022	David Remillard	*Attorney Continued editing revised draft of opening brief	2.00
11/1/2022	Kaitlyn Degnan	*Attorney Substantive review of remainder of opening brief. Suggested additional edits as necessary.	0.90
11/1/2022	David Remillard	*Attorney Began editing draft opening brief; research of relevant caselaw and regulations.	1.40
11/2/2022	David Remillard	*Attorney Began implementing suggested edits into draft opening brief.	0.70
11/2/2022	Jenna Zellmer	*Attorney Reviewed draft brief. Suggested additional edits to clarify and strengthen and answered questions re: argument.	2.00
11/3/2022	David Remillard	*Attorney Continued editing opening brief to prepare final draft.	0.30
11/4/2022	David Remillard	*Attorney Finished editing opening brief to prepare final draft.	0.40
11/10/2022	David Remillard	*Attorney Completed and filed opening brief.	2.80
1/9/2023	David Remillard	*Attorney Received and replied to OGC request to extend brief deadline.	0.10
2/24/2023	David Remillard	*Attorney Received notice of appellee's brief; began reviewing.	0.20

## Exhibit A

2/27/2023	David Remillard	*Attorney Reviewed VA's brief for substantive arguments; drafted memo to file summarizing arguments for litigation strategy purposes.	0.60
3/7/2023	David Remillard	*Attorney Reviewed case and discussed for litigation strategy purposes.	0.30
3/9/2023	David Remillard	*Attorney Began drafting reply brief.	0.30
3/29/2023	David Remillard	Continued drafting reply brief; research of relevant caselaw.	1.50
4/5/2023	David Remillard	Continued drafting reply brief; review of relevant caselaw.	2.50
4/6/2023	David Remillard	Continued drafting reply brief arguments. Finished draft of first argument.	0.70
4/7/2023	David Remillard	Continued drafting reply brief.	0.40
4/10/2023	David Remillard	Finished argument I of reply brief; began drafting Argument II of reply brief; edited reply brief.	2.70
4/10/2023	David Remillard	Completed draft of reply brief; continued editing.	0.70
4/12/2023	David Remillard	Completed draft of reply brief.	0.60
4/20/2023	Brittani Howell	Reviewed pleadings and began reviewing draft reply brief	0.40
4/21/2023	David Remillard	Finished implementing edits and comments into draft reply brief.	2.00

## Exhibit A

4/21/2023	David Remillard	Began implementing edits to draft reply brief.	1.00
4/21/2023	Brittani Howell	Continued reviewing reply brief and made comments and suggestions throughout where additional arguments or reorganization was needed	0.70
4/24/2023	Brittani Howell	Reviewed revised draft of reply brief and left comments and suggestions throughout	1.10
4/24/2023	David Remillard	Implemented edits into reply brief.	1.50
4/24/2023	David Remillard	Completed and filed reply brief.	1.40
5/10/2023	David Remillard	Reviewed record of proceedings and compared against evidence cited in briefs; drafted and filed letter to court accepting record of proceedings.	0.70
9/20/2023	David Remillard	Reviewed issues in case and drafted memo regarding assignment to panel.	0.50
10/30/2023	Grace Hurley	Participated in preliminary meeting for oral argument	0.60
10/30/2023	Grace Hurley	Reviewed pleadings, relevant cases, and CAVC order listing issues for oral argument	1.50
11/2/2023	Grace Hurley	Began review of RBA and outline of facts to prepare for OA - R-1945-3236.	1.50
11/3/2023	Grace Hurley	Completed review of casemap and RBA R-1-1944 for oral argument purposes and added to outline of relevant facts.	3.00
11/3/2023	Grace Hurley	Completed outline of relevant facts for oral argument purposes.	0.50

## Exhibit A

11/6/2023	Grace Hurley	Prepared for and participated in meeting to prepare for oral argument.	1.00
11/9/2023	Grace Hurley	Listened to oral arguments in Walleman v. McDonough and Duran v. McDonough; reviewed Court's precedential decision in Duran.	2.20
11/9/2023	Grace Hurley	Researched memorandum decisions and precedential decisions regarding Court's interpretation of Diagnostic Code 5055.	2.40
11/9/2023	Grace Hurley	Listened to oral argument in Tedesco v. Wilkie.	1.00
11/13/2023	Grace Hurley	Prepared outline of medical history of knee condition; note to the file	1.90
11/16/2023	Grace Hurley	Continued researching caselaw on severance and reductions; research on differences between DCs in sections 4.71a and 4.124a	2.60
11/17/2023	Grace Hurley	Researched legislative history of severance statute and Court's interpretation and application of Read v. Shinseki for oral argument preparation purposes.	1.80
11/20/2023	Grace Hurley	Reviewed notes on law to be discussed at Oral argument and arguments put forth in pleadings; prepared for and participated in meeting discussing oral argument strategy and OGC's proposed remand offer.	1.70
11/20/2023	Grace Hurley	Called client; discussed updates on the status of client's case; drafted memo to file recapping phone call; updated client file.	0.20
11/20/2023	Grace Hurley	Drafted and sent e-mail to OGC responding with position to possible settlement offer; updated client file.	0.10
11/20/2023	Grace Hurley	Prepared and e-filed notice of appearance, reviewed confirmation e-mail for accuracy, and updated file.	0.20
11/27/2023	Grace Hurley	Received and reviewed updated settlement offer from OGC; compared offer to case notes; drafted memo to file regarding terms of offer.	0.30



**Exhibit A**

12/6/2023	Kaitlyn Degnan	Substantive review of JMT for accuracy and completeness.	0.30
12/6/2023	David Remillard	Spoke with client regarding status of case; memo to file.	0.10
12/6/2023	Grace Hurley	Prepared and e-filed notice of appearance, reviewed confirmation e-mail for accuracy, and updated file.	0.20
12/6/2023	Grace Hurley	Received e-mail from VA counsel serving draft motion to terminate appeal and joint stipulated agreement; reviewed draft for accuracy and to ensure inclusion of all necessary evidence and issues; made necessary revisions	0.40
12/6/2023	Grace Hurley	Received and reviewed notice of OGC's e-filing of joint motion to terminate appeal and stipulated agreement; reviewed motion for accuracy; updated file.	0.10
12/13/2023	Grace Hurley	Received and reviewed e-mail notification of Court's entry of judgment; updated client file.	0.10
12/13/2023	Grace Hurley	Received and reviewed Judge order terminating appeal; updated client file.	0.10
12/13/2023	Grace Hurley	Received and reviewed e-mail notification of Court's entry of mandate; updated client file.	0.10
12/20/2023	Danielle Gorini	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
12/20/2023	Danielle Gorini	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.00
12/20/2023	Zachary Stolz	Reviewed the EAJA Petition for proofreading purposes and the Exhibit A to ensure billing accuracy.	0.30

**Expenses**      Filing Fee: \$50.00

**Summary**

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
<b>Zachary Stolz</b>	<b>0.30</b>	<b>\$ 236.79</b>	<b>\$ 71.04</b>
<b>Olga Tretyakova</b>	<b>0.20</b>	<b>\$ 180.00</b>	<b>\$ 36.00</b>

**Exhibit A**

<b>Kaitlyn Degnan</b>	<b>2.30</b>	<b>\$</b>	<b>236.79</b>	<b>\$</b>	<b>544.62</b>
<b>Jordan Broadbent</b>	<b>2.60</b>	<b>\$</b>	<b>236.79</b>	<b>\$</b>	<b>615.65</b>
<b>Jenna Zellmer</b>	<b>2.00</b>	<b>\$</b>	<b>236.79</b>	<b>\$</b>	<b>473.58</b>
<b>Grace Hurley</b>	<b>23.50</b>	<b>\$</b>	<b>236.79</b>	<b>\$</b>	<b>5,564.57</b>
<b>Geoffery LaForce</b>	<b>3.60</b>	<b>\$</b>	<b>180.00</b>	<b>\$</b>	<b>648.00</b>
<b>David Remillard</b>	<b>52.30</b>	<b>\$</b>	<b>236.79</b>	<b>\$</b>	<b>12,384.12</b>
<b>Danielle Gorini</b>	<b>1.20</b>	<b>\$</b>	<b>236.79</b>	<b>\$</b>	<b>284.15</b>
<b>Dalton Chapman</b>	<b>0.20</b>	<b>\$</b>	<b>180.00</b>	<b>\$</b>	<b>36.00</b>
<b>Brittani Howell</b>	<b>2.20</b>	<b>\$</b>	<b>236.79</b>	<b>\$</b>	<b>520.94</b>
<b>Total Hours:</b>	<b>90.40</b>				
<b>Total Fee Amount:</b>					<b>\$21,228.66</b>

## EXHIBIT B

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

*Revised Methodology starting with 2015-2016 Year*

Years (Hourly Rate for June 1 – May 31, based on change in PPI-OL since January 2011)

Experience	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
31+ years	568	581	602	613	637	665
21-30 years	530	543	563	572	595	621
16-20 years	504	516	536	544	566	591
11-15 years	455	465	483	491	510	532
8-10 years	386	395	410	417	433	452
6-7 years	332	339	352	358	372	388
4-5 years	325	332	346	351	365	380
2-3 years	315	322	334	340	353	369
Less than 2 years	284	291	302	307	319	333
Paralegals & Law Clerks	154	157	164	166	173	180

*Explanatory Notes*

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia (USAO) to evaluate requests for attorney's fees in civil cases in District of Columbia courts. The matrix is intended for use in cases in which a fee-shifting statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, or by other Department of Justice components, or in other kinds of cases. The matrix does **not** apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. A "reasonable fee" is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. *See, e.g., Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Consistent with that definition, the hourly rates in the above matrix were calculated from average hourly rates reported in 2011 survey data for the D.C. metropolitan area, which rates were adjusted for inflation with the Producer Price Index-Office of Lawyers (PPI-OL) index. The survey data comes from ALM Legal Intelligence's 2010 & 2011 Survey of Law Firm Economics. The PPI-OL index is available at <http://www.bls.gov/ppi>. On that page, under "PPI Databases," and "Industry Data (Producer Price Index - PPI)," select either "one screen" or "multi-screen" and in the resulting window use "industry code" 541110 for "Offices of Lawyers" and "product code" 541110541110 for "Offices of Lawyers." The average hourly rates from the 2011 survey data are multiplied by the PPI-OL index for May in the year of the update, divided by 176.6, which is the PPI-OL index for January 2011, the month of the survey data, and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
3. The PPI-OL index has been adopted as the inflator for hourly rates because it better reflects the mix of legal services that law firms collectively offer, as opposed to the legal services that typical consumers use, which is what the CPI-

Legal Services index measures. Although it is a national index, and not a local one, *cf. Eley v. District of Columbia*, 793 F.3d 97, 102 (D.C. Cir. 2015) (noting criticism of national inflation index), the PPI-OL index has historically been generous relative to other possibly applicable inflation indexes, and so its use should minimize disputes about whether the inflator is sufficient.

4. The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed in *Laffey v. Northwest Airlines, Inc.* 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore (DC-MD-VA-WV) area. The USAO rates for years prior to and including 2014-15 remains the same as previously published on the USAO's public website.
5. The various "brackets" in the column headed "Experience" refer to the attorney's years of experience practicing law. Normally, an attorney's experience will be calculated starting from the attorney's graduation from law school. Thus, the "Less than 2 years" bracket is generally applicable to attorneys in their first and second years after graduation from law school, and the "2-3 years" bracket generally becomes applicable on the second anniversary of the attorney's graduation (*i.e.*, at the beginning of the third year following law school). *See Laffey*, 572 F. Supp. at 371. An adjustment may be necessary, however, if the attorney's admission to the bar was significantly delayed or the attorney did not otherwise follow a typical career progression. *See, e.g., EPIC v. Dep't of Homeland Sec.*, 999 F. Supp. 2d 61, 70-71 (D.D.C. 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate); *EPIC v. Dep't of Homeland Sec.*, 982 F. Supp. 2d 56, 60-61 (D.D.C. 2013) (same). The various experience levels were selected by relying on the levels in the ALM Legal Intelligence 2011 survey data. Although finer gradations in experience level might yield different estimates of market rates, it is important to have statistically sufficient sample sizes for each experience level. The experience categories in the current USAO Matrix are based on statistically significant sample sizes for each experience level.
6. ALM Legal Intelligence's 2011 survey data does not include rates for paralegals and law clerks. Unless and until reliable survey data about actual paralegal/law clerk rates in the D.C. metropolitan area become available, the USAO will compute the hourly rate for Paralegals & Law Clerks using the most recent historical rate from the USAO's former *Laffey* Matrix (*i.e.*, \$150 for 2014-15) updated with the PPI-OL index. The formula is \$150 multiplied by the PPI-OL index for May in the year of the update, divided by 194.3 (the PPI-OL index for May 2014), and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
7. The attorney's fees matrices issued by the United States Attorney's Office are intended to facilitate the settlement of attorney's fees claims in actions in which the United States may be liable to pay attorney's fees to the prevailing party and the United States Attorney's Office is handling the matter. The United States Attorney's Office is presently working to develop a revised rate schedule, based upon current, realized rates paid to attorneys handling complex federal litigation in the District of Columbia federal courts. This effort is motivated in part by the D.C. Circuit's urging the development of "a reliable assessment of fees charged for complex federal litigation in the District." *D.L. v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019). This new matrix should address the issues identified by the majority in *D.L.*, but it is expected that it will be some time before a new matrix can be prepared. In the interim, for matters in which a prevailing party agrees to payment pursuant to the matrices issued by the United States Attorney's Office, the United States Attorney's Office will not demand that a prevailing party offer the additional evidence that the law otherwise requires. *See Eley*, 793 F.3d at 104 (quoting *Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995)) (requiring "evidence that [the] 'requested rates are in line with those prevailing in the community for similar services'").