

THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

CASE FILE NO.: 17-3766

ROCCO V. PERCIAVALLE

Appellant,

v.

DENIS MCDONOUGH,

Secretary of Veterans Affairs,

Appellee.

**APPELLANT'S APPLICATION
FOR AWARD OF
ATTORNEY'S FEES AND
EXPENSES**

Appellant hereby applies to this honorable Court for an award of his attorney's fees and expenses in the amount of **\$16,173.66**. This application is made pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), and this Court's Rule 39.

I. PROCEDURAL HISTORY

On September 18, 2017, the Board of Veterans' Appeals (Board) entered a decision that found no CUE in a 1971 AOJ decision that rated Mr. Perciavalle's left knee. Mr. Perciavalle timely appealed to this Court. This case was litigated. . It was necessary for Mr. Perciavalle to (A) examine, inventory, and analyze the claim file; (B) review and inventory the Secretary's designation of the record on appeal; (C) inspect and inventory the record when it was filed; (D) file an opening brief; (E) review for response the appellee's brief; (F) file a reply brief; (G) prepare and file a motion for oral argument; (H) prepare for and perform oral argument before a panel of three judges; (I) review panel decision; (J) prepare and file response to the Secretary's motion for full court review; (K) prepare and file supplemental briefing; (L) review en banc decision for issues to

appeal to the Federal Circuit; (M) coordinate with co-counsel for representation at CAFC; (N) serve as co-counsel at CAFC to include reviewing draft briefs and participate in two moot oral arguments. Ultimately, the Veterans Court set aside the Board's decision and remanded it to correctly apply the law.

This application is timely under 28 U.S.C. § 2412(d)(1)(B).

II. AVERMENTS

Mr. Perciavalle avers—

- (1) This matter is a civil action;
- (2) This action is against an agency of the United States, namely the Department of Veterans Affairs;
- (3) This matter is not in the nature of tort;
- (4) This matter sought judicial review of an agency action, namely the prior disposition of Mr. Perciavalle's appeal to the Board of Veterans' Appeals;
- (5) This Court has jurisdiction over the underlying appeal under 38 U.S.C. § 7252;
- (6) Mr. Perciavalle is a "party" to this action within the meaning of 28 U.S.C. § 2412(d)(2)(B);
- (7) Mr. Perciavalle is a "prevailing party" in this matter within the meaning of 28 U.S.C. § 2412(d)(1)(a);
- (8) Mr. Perciavalle is not the United States;
- (9) Mr. Perciavalle is eligible to receive the award sought;
- (10) The position of the Secretary was not substantially justified; and

(11) There are no special circumstances in this case which make such an award unjust.

Mr. Perciavalle submits below an itemized statement of the fees and expenses for which he applies. The attached itemization shows the time counsel spent representing Mr. Perciavalle on his appeal to the Court. Accordingly, Mr. Perciavalle contends that he is entitled to an award of attorney's fees and expenses in this matter in the total amount itemized.

III. ARGUMENT

The assessment of the "jurisdictional adequacy" of a petition for EAJA fees is controlled by the factors summarized and applied in, e.g., *Cullens v. Gober*, 14 Vet. App. 234, 237 (2001) (*en banc*).

A. "Court"

This Court is a court authorized to award attorney's fees and expenses as sought herein. 28 U.S.C. § 2412(d)(2)(F). This Court has exclusive jurisdiction of this matter. 38 U.S.C. § 7252(a).

B. Eligibility: "Party"

Mr. Perciavalle is a party eligible to receive an award of fees and expenses because his net worth does not exceed \$2 million. See 28 U.S.C. § 2412(d)(2)(B). The declaration set forth in paragraph 5A in the Attorney-Client Fee Contract filed with the Court and served upon the Secretary on October 17, 2017, establishes this fact.

C. “Prevailing”

To be a “prevailing party” within the meaning of the statute, a party need only have succeeded “on any significant issue in litigation which achieve[d] some of the benefit . . . sought in bringing suit.” *Texas Teachers Association v. Garland Independent School District*, 489 U.S. 782, 791-92, 109A S.Ct. 1486, 1493, 103 L.Ed.2d 866, 876 (1989)).

The “prevailing party” requirement is satisfied by a remand. *Stillwell v. Brown*, 6 Vet. App. 291, 300 (1994). See *Employees of Motorola Ceramic Products v. United States*, 336 F.3d 1360 (Fed. Cir. 2003) (remand because of alleged error and court does not retain jurisdiction). This Court sharpened the criteria for “prevailingness” in *Sumner v. Principi*, 15 Vet. App. 256, 260-61 (2001) (*en banc*). “Prevailingness” now depends on the presence of either a finding by the Court or a concession by the Secretary of “administrative error.” Mr. Perciavalle is a “prevailing party” entitled to an award of fees and expenses. For this assertion, Mr. Perciavalle relies upon the following to satisfy the *Sumner* criteria:

In a memorandum decision, the Veterans Court set aside the Board's decision following the Federal Circuit's decision in this matter. The Federal Circuit, in turn, affirmed that part of this Court's *en banc* decision that determined the Board erred by rewriting Mr. Perciavalle's CUE motion, and for failing to sympathetically read his CUE motion.

Prevailing party at the Veterans Court. The en banc decision first determined that the Board erred by "[m]isstating the Veteran's CUE motion." See en banc dec., at 11-12. The en banc court also held the Board erred by failing to sympathetically construe Mr. Perciavalle's CUE, and had the Board correctly read the CUE, "the veteran's CUE motion was not subject to denial 'as a matter of law.'" *Id.*, at 13. These errors, in turn, resulting in the Board "Failing To Adjudicate the Veteran's Challenge to the Application of the 1971 Law." *Id.*, at 14. However, the court ultimately affirmed based two minority decisions that found harmless error and no error.

Prevailing party at the Federal Circuit. Mr. Perciavalle appealed, and the Federal Circuit affirmed in part, vacated in part, and remanded the en banc decision. The Federal Circuit affirmed that part of the Veterans Court's decision finding error in the Board's failure to adhere to the longstanding legal obligation to sympathetically read the CUE motion. CAFC dec., at 11-12. The Federal Circuit also vacated the Allen concurrence that found no error; and vacated the Toth concurrence that found the Board's error harmless. *Id.*, at 12-13. Ultimately, the Federal Circuit remanded the appeal "with direction to remand the case to the Board to address the question of a CUE in the 1971 decision consistent with this opinion." *Id.*, at 14.

Mr. Perciavalle received an order from this Court, and the Federal Circuit that the Board committed administrative error when it failed to sympathetically read his CUE, rewrote his CUE to deny as a matter of law, and generally did not provide a decision on the issues before it as required by 38 U.S.C. § 7104(a). This remand was

not predicated upon a change in law after the Board's decision or upon the need for the Board to consider a newly raised issue or new evidence discovered while the case was on appeal. See *Zuberi v. Nicholson*, 19 Vet. App. 541, 547 (2006). Instead, this remand was based upon the Board's violations of its statutory duties.

D. The Position of the Secretary Was Not Substantially Justified

To defeat this application for fees and expenses the Secretary must show that the Government's position was "substantially justified." *Brewer v. American Battle Monument Commission*, 814 F.2d 1564, 1566 (Fed. Cir. 1987); *Stillwell v. Brown*, 6 Vet. App. 291, 301 (1994) (92-205), *appeal dismissed*, 46 F.3d 1111 (Fed. Cir. 1995) (94-7090). See 28 U.S.C. § 2412(d)(1)(B). The Government must show its position to have had a "reasonable basis both in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 563-68, 108B S.Ct. 2541, 2549-51, 101L.Ed.2d. 503-506 (1988); *Beta Systems v. United States*, 866 F.2d 1404, 1406 (Fed. Cir. 1989).

"Substantial justification" is in the nature of an affirmative defense: If the Secretary wishes to have its benefit, he must carry the burden of proof on the issue. *Clemmons v. West*, 12 Vet. App. 245, 246 (1999) (97-2138), *appeal dismissed*, 206 F.3d 1401 (Fed. Cir. 2000) (99-7107), *rehrg denied*, __ F.3d __ (May 2, 2000). It is sufficient for Mr. Perciavalle simply to aver this element.

E. Itemized Statement of Fees and Expenses

Annexed to this application are the required declaration of the lawyer, Exhibit A, and an itemized statement of the services rendered and the fees and expenses for which Mr. Perciavalle seeks compensation, Exhibit B. See 28 U.S.C. § 2412(d)(1)(B).

Mr. Perciavalle's counsel seeks compensation for attorney's fees and expenses incurred at the following rate and in the amounts shown¹ for representation in this Court:

| Attorney & Administrative Services | Rate: | Hours: | Fee: | Totals: |
|---|--------------|---------------|-------------|--------------------|
| Kenneth H. Dojaquez, Attorney | \$205.21 | 75.87 | \$15,568.66 | \$15,568.66 |
| Paralegal | \$150.00 | .37 | \$55.00 | \$55.00 |
| Total for Services | | | | \$15,623.66 |
| Total for Expenses | | | | \$550.00 |
| Total for Application | | | | \$16,173.66 |

F. Calculation of Rate of Fees

The fees in this case were calculated using the maximum hourly rate permitted under EAJA.

I. Lawyer's Standard Rates.

At the Court, Mr. Dojaquez' standard fee agreement states he shall be entitled to an award of attorney's fees under EAJA. At the agency level, Mr. Dojaquez similarly limits his fee to a contingency fee. Mr. Dojaquez' practice is limited to veteran benefits

¹ The chart summarizes hours, fees, and expenses. The chart only reflects hours of work performed for which the applicant is seeking compensation. Exhibit B is an itemized list of all fees and expenses—even those for which the applicant is not seeking compensation.

law; thus, Mr. Dojaquez considers his standard hourly rate to be commensurate with the “EAJA” rate in effect at the time Mr. Dojaquez provides services. However, based upon his geographical area, years of practice, and experience in veterans benefits law, a reasonable hourly rate for his services in other types of cases would be at least \$200.00.

2. Reasonableness of Lawyer’s Rate.

Widely followed tabulations establish that the lawyer’s hourly rate billed in this application is well below the prevailing rate. See the “*Laffey*”² matrix” and a similar table attributed to the United States Attorney, both of which appeared in *Covington v. District of Columbia*, 839 F. Supp. 894, 904 (D.D.C.) in 1993; and see a similar version of the “*Laffey* matrix” from BARTON F. STICHMAN & RONALD B. ABRAMS, THE VETERANS BENEFITS MANUAL, p. 1634 (2009). The *Covington* and VBM versions of the “*Laffey* matrix” have been adjusted for inflation. One readily finds that the lawyer’s rate for attorney fees in this case is well below the rates shown in the tabulations.

Also, in Exhibit A, the applicant’s lawyer declares the billing rate utilized in Mr. Perciavalle’s case is less than the prevailing market rate for similar services performed by attorneys in Columbia, South Carolina.

3. Calculation of “EAJA Cap.”

As the Court is aware, the statutory maximum rate for lawyer fees under EAJA is now \$125.00 per hour. 28 U.S.C. § 2412(d)(2)(A). It may be adjusted for inflation by using the United States Department of Labor’s Consumer Price Index for All Urban

² *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983).

Consumers (published by the Bureau of Labor Statistics) appropriate to the region, *Mannino v. West*, 12 Vet. App. 242, 244 (1999) (97-784), for the approximate mid-point of the representation. For this case, we used the date on which the en banc oral argument was held, September 22, 2020, as the mid-point of representation. *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994). Exhibit C. The rate-cap for the fees for lawyer services used in this application has been calculated as follows:

$$\begin{array}{lcl} \$125 \times \frac{\text{CPI-U [Southern Region, (September 2020)]}^3}{\text{CPI-U (Southern Region, March 1996)}} & = & \$125 \times \frac{250.193}{152.4} = \$205.21 \end{array}$$

4. Rate Applied.

Mr. Dojaquez is the only attorney who performed work on this case for a fee, so only one billing rate was used.

5. Billings Herein & “Billing Judgment.”

The lawyer has also reviewed the itemization to exercise “billing judgment” by determining whether the activity or expense might be an overhead expense or, for any other reason, not properly billable. The lawyer also seeks to assure sound “billing judgment” by reducing, where appropriate, the number of billable hours of work performed that might be considered excessive and by seeking less than the “EAJA-CPI

³ The CPI-U is available at the Internet web site of the Bureau of Labor Statistics, <http://www.bls.gov/ro3/cpiso.htm> The graph used for this application was found at: http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0300SA0,CUUS0300SA0

rate.” However, the lawyer will be grateful to have brought to his attention any mistakes which might remain.

The lawyer has not billed for any attorney time from the co-counsel representation at the Federal Circuit by attorneys at Orrick, Harrington, & Sutcliffe LLP. The attorney at Orrick represented Mr. Perciavalle entirely pro bono so none of their time has been billed.

6. Paralegal

The prevailing market rate for the work done by paralegals in the Columbia, SC area was at least \$180.00 from June 1, 2020, to the present. See USAO Attorney’s Fees Matrix, 2015-2021 (Exhibit D) (“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. Nw. Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff’d in part, rev’d in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore ... area.”); see also *Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996); *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008).

The hourly rate for a paralegal in South Carolina is reduced to \$150.00 for this application.

G. Expenses

All expenses are claimed at the actual cost incurred, with no “mark ups” or premiums. Due to the lawyer's move from one firm to another in 2019, the receipts for

the 2019 oral argument were lost. Therefore, Mr. Perciavalle will not seek reimbursement of these expenses. However, the lawyer assures this Court that Mr. Perciavalle will not be required to reimburse counsel for these costs.

H. Reasonableness of the Fee

Finally, it is necessary to show the reasonableness of the award sought on the basis of the 12 factors summarized in *Hensley v. Eckerhart*, 461 U.S. 424, 430 n. 3, 103A S.Ct. 1933, 76 L.Ed.2d 40 (1983):

1. *The time and labor* required is reported in the attached itemization.
2. *The novelty and difficulty of the questions.* This appeal required two oral arguments, one before the full court, and an appeal to the Federal Circuit. The issues presented to the Federal Circuit, in particular, were difficult legal questions requiring substantial skill.
3. *The skill requisite to perform the legal service properly.* Veterans disability is a species of law of its own, requiring specialization, continuing education, and experience.
4. *The preclusion of employment by the attorney due to acceptance of the case.* This factor did not affect this engagement.
5. *The customary fee.* There are no lawyers known to the applicant and counsel who accept clients in veterans' benefits matters on the basis of a "flat rate" or "customary fee."

6. *Whether the fee is fixed or contingent.* The engagement agreement in this case is contingent upon sufficient success on the merits. Pursuant to the agreement, the attorney shall be entitled to an award of attorney's fees under EAJA.

7. *Time limitations imposed by the client or the circumstances.* This engagement was not affected by unusual urgency.

8. *The amount involved and the results obtained.* The amount for which the application is made is stated earlier. The amount of the veteran's benefits in controversy is not regarded by the applicant as relevant for the purposes of this application.

9. *The experience, reputation, and ability of the attorney.* The lawyer whose fees are sought is now in his 13th year in the practice of veteran's benefits law. He is a member and an active participant in the National Organization of Veterans' Advocates.

10. *The "undesirability" of the case.* This engagement was not affected by this factor.

11. *The nature and length of the professional relationship with the client.* Undersigned counsel has represented Mr. Perciavalle since October 2017 through the filing of this appeal, but will not represent him on the remand to the Board.

12. *Awards in similar cases.* EAJA awards in veterans benefits cases are not collected in a counterpart of a jury award digest, but decisions of this Court reveal awards over \$20,000.00. *E.g., Perry v. West*, 11 Vet. App. 319 (1998)

(\$20,430 award approved); *Ussery v. Brown*, 10 Vet. App. 51 (1997) (93-0696) (approved application for \$21,898).

I. Wrap-Up Application

Mr. Perciavalle recognizes that the Secretary is privileged to oppose this application. Such a dispute may require that Mr. Perciavalle file responsive pleadings. In those instances, Mr. Perciavalle asks that he be permitted to supplement this application with a single, final “wrap-up” application which would include fees and expenses incurred after the date of this application.

IV. Prayer for Relief

Mr. Perciavalle respectfully moves for an order awarding to appellant his attorney’s fees and expenses as set forth herein. This application for attorney’s fees and expenses is—

Respectfully submitted for Mr. Perciavalle by:

/s/ Kenneth H. Dojaquez

Kenneth H. Dojaquez, Esq.
Attorney for Appellant
Carpenter Chartered
P. O. Box 2099
Topeka, KS 66601
Telephone: 785-357-5251
Email: kenny@carpenterchartered.com

ANNEXED

Exhibit A Lawyer’s Declaration

Exhibit B Itemized List of Services, Fees, and Expenses

Exhibit C CPI-U Chart

Exhibit D.....*Laffey Matrix*

THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

CASE FILE NO.: 17-3766

ROCCO V. PERCIAVALLE,
Appellant,

v.

DENIS MCDONOUGH,
Secretary of Veterans Affairs,
Appellee.

**ATTORNEY'S
DECLARATION
RE: ITEMIZATION OF
FEES AND EXPENSES**

Kenneth H. Dojaquez, attorney for the appellant, hereby declares and states:

1. I am the lawyer who represents the appellant named in this appeal. This declaration is based upon my personal knowledge as stated herein.

2. On September 28, 2017, the appellant signed an engagement agreement for me to represent him with a pending appeal before the Court. I have represented appellant in this matter continuously since that date. I entered my appearance in this case on October 17, 2017.

3. I worked on this case for a period of time before filing the Notice of Appeal in expectation that an appeal to the court would be filed, and that work is itemized in the attached statement of fees and expenses.

4. The engagement agreement in this case is contingent upon sufficient success on the merits. Pursuant to the agreement, I will be entitled to an award of attorneys fees under EAJA. I explained to Mr. Perciavalle that, if we were successful at the Court, I would apply for my fees under EAJA.

5. To ensure my billing rates are reasonable, I consulted with other practitioners. Based upon my personal experience at a private firm in Columbia, South Carolina, and inquiry to other practitioners, the billing rates charged by me in Mr. Perciavalle's case are consistent with or less than the prevailing market rates for similar services performed by attorneys in Columbia, South Carolina.

6. The attached itemization of fees and expenses is based on entries made contemporaneously with the work or expenditure. Fees for time are based on measured time or reasonably accurate estimates sometimes rounded to hundredths of an hour. I have reviewed the itemized billing statement of fees and expenses to ensure they are correct. I am satisfied that the statement accurately reflects the work I performed. I know of no errors or misrepresentations in the statement. I have considered and eliminated all time that is excessive or redundant.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed in Columbia, South Carolina, this the following date: January 17, 2024

/s/ Kenneth H. Dojaquez

Kenneth H. Dojaquez, Esq.
Attorney for Appellant
Carpenter Chartered
P. O. Box 2099
Topeka, KS 66601
Telephone: 785-357-5251
Email: kenny@carpenterchartered.com

Appellant First Last CAVC (xx-xxxx)

| | Start | End | Time | Hours | |
|-----------|-------|-------|------|-------|---|
| 2017 | | | | | |
| 19-Sep-18 | | | 0:15 | 0.25 | Review BVAD for issues to appeal |
| 28-Sep-18 | 16:00 | 16:35 | 0:35 | 0.58 | phone call with vet to discuss representation and appeal process |
| 2018 | | | | | |
| 12-Feb-18 | 12:18 | 12:52 | 0:34 | 0.57 | RBA review |
| | 12:52 | 13:07 | 0:15 | 0.25 | legal research |
| 27-Mar-18 | 23:25 | 0:53 | 1:28 | 1.47 | Review file, outline argument, legal research |
| 28-Mar-18 | 22:58 | 23:52 | 0:54 | 0.90 | Draft R33 memo |
| 11-Apr-18 | 13:00 | 13:20 | 0:20 | 0.33 | prep for R33 conf call |
| | 13:30 | 13:45 | 0:15 | 0.25 | R33 conf call; draft notes to file |
| 4-May-18 | 10:50 | 11:18 | 0:28 | 0.47 | Draft Brief: Facts |
| 7-May-18 | 16:30 | 16:53 | 0:23 | 0.38 | Draft Brief: Argument |
| 10-May-18 | 16:00 | 16:42 | 0:42 | 0.70 | Draft Brief: Argument |
| 11-May-18 | 16:21 | 16:42 | 0:21 | 0.35 | Draft Brief: Edit and revise |
| | 16:42 | 16:54 | 0:12 | 0.20 | Draft Brief: TOC/TOA |
| 6-Sep-18 | 9:33 | 10:41 | 1:08 | 1.13 | Review Secretary's brief; outline arguments; legal research |
| | 10:41 | 11:16 | 0:35 | 0.58 | Draft reply brief: arg 1-2 |
| | 11:16 | 12:09 | 0:53 | 0.88 | Draft reply brief: arg 3-4 |
| | 12:20 | 12:40 | 0:20 | 0.33 | Draft reply brief: edit and revise |
| | 16:51 | 17:10 | 0:19 | 0.32 | Draft reply brief: TOC/TOA |
| 7-Sep-18 | | | 0:10 | 0.17 | Draft email in response to Secretary's email regarding motion for oral argument |
| 13-Sep-18 | 12:25 | 12:41 | 0:16 | 0.27 | Draft motion for oral argument |
| 17-Sep-18 | 10:01 | 10:11 | 0:10 | 0.17 | Paralegal: review ROP |
| 2019 | | | | | |
| 11-Feb-19 | 12:00 | 19:00 | 7:00 | 7.00 | Travel to DC for oral argument |
| 11-Feb-19 | 21:00 | 23:10 | 2:10 | 2.17 | Prepare for oral argument |
| 12-Feb-19 | | | 0:00 | 3.00 | Oral argument |
| | 12:00 | 19:00 | 7:00 | 7.00 | Travel home from DC |
| 8-Jul-19 | 11:15 | 11:45 | 0:30 | 0.50 | Review Kisor and outline for application to this appeal |
| | 14:00 | 14:25 | 0:25 | 0.42 | Review Kisor and outline for application to this appeal |
| 8-Jul-19 | 15:30 | 16:00 | 0:30 | 0.50 | Phone call with Attorney Carpenter to discuss implications of Kisor and strategy for moving forward |
| 12-Jul-20 | | | 0:00 | 0.00 | Draft and file Rule 30(b) notice |
| 2020 | | | | | |
| 16-Apr-20 | 13:20 | 14:00 | 0:40 | 0.67 | Review Secretary motion for en banc. Outline response per Court order |
| | 14:00 | 15:25 | 1:25 | 1.42 | Draft response per Court order |
| 20-Apr-20 | 10:20 | 12:27 | 2:07 | 2.12 | Draft response per Court order |
| | 12:42 | 13:22 | 0:40 | 0.67 | Draft response per Court order |
| | 13:22 | 14:00 | 0:38 | 0.63 | Edit and revise response |
| 18-Sep-20 | 11:00 | 14:40 | 3:40 | 3.67 | Oral argument preparation |
| 19-Sep-20 | 6:00 | 9:00 | 3:00 | 3.00 | Oral argument preparation |
| 21-Sep-20 | 7:30 | 15:00 | 7:30 | 7.50 | Oral argument preparation |
| 22-Sep-20 | 9:11 | 11:30 | 2:19 | 2.32 | Oral argument preparation |

| | Start | End | Time | Hours | |
|-----------|-------|-------|------|--------------|--|
| | 12:30 | 14:30 | 2:00 | 2.00 | Oral argument |
| 2021 | | | | | |
| 18-Mar-21 | 12:00 | 13:30 | 1:30 | 1.50 | Reviewed George v. McDonough and panel dec in this case. Drafted outline of motion for leave to file suppl briefing |
| | 13:45 | 14:15 | 0:30 | 0.50 | Draft motion for supp briefing |
| 20-Apr-21 | 12:00 | 13:30 | 1:30 | 1.50 | Review George and compare with Secretary's position in briefs and motion for en banc. Reviewed oral argument recording |
| 22-Apr-21 | 8:00 | 10:00 | 2:00 | 2.00 | legal research on George and issues there |
| | 11:00 | 13:50 | 2:50 | 2.83 | Draft supplemental brief |
| 24-Apr-21 | 4:45 | 5:50 | 1:05 | 1.08 | edit and revise supplemental brief |
| 26-Apr-21 | 5:43 | 6:20 | 0:37 | 0.62 | Final edit supplemental brief |
| | 13:41 | 13:53 | 0:12 | 0.20 | Paralegal: draft TOC/TOA. File brief |
| 2022 | | | | | |
| 18-Jan-22 | 11:00 | 11:15 | 0:15 | 0.25 | review en banc decision for issues to appeal |
| | 12:00 | 12:50 | 0:50 | 0.83 | review en banc decision for issues to appeal |
| 19-Jan-22 | | | 0:00 | 0.50 | Discussion with shareholders for issues to appeal |
| 12-May-22 | 6:30 | 7:18 | 0:48 | 0.80 | Detailed review of CAFC draft opening brief. Drafted email with comments to lead counsel. |
| 7-Oct-22 | | | 0:00 | 0.50 | Reviewed Government's CAFC opening brief. Offered brief comments to lead counsel |
| 4-Nov-22 | | | 0:00 | 1.50 | Detailed review of Gov brief and draft reply brief. Drafted email with comments to lead counsel. |
| 2023 | | | | | |
| 1-May-23 | | | 0:00 | 1.50 | Moot oral argument #1 |
| 2-May-23 | | | 0:00 | 1.50 | Moot oral argument #2 |
| 25-Jul-23 | | | 0:00 | 0.50 | Reviewed CAFC decision |
| | | | 0:00 | 0.25 | Call with client to review CAFC decision |
| 8-Dec-23 | | | 0:00 | 0.50 | Review CAVC memo decision. Draft email to client to explain decision |
| 2024 | | | | | |
| 3-Jan-24 | | | 0:00 | 0.25 | Draft motion to enter mandate |
| 16-Jan-24 | 8:15 | 10:15 | 2:00 | 2.00 | Draft EAJA application |
| | | | | | |
| | | | | 75.87 | Total Hours (Attorney) |
| | | | | \$ 205.21 | Rate |
| | | | | \$ 15,568.66 | Total Fee (Attorney) |
| | | | | 0.37 | Total Hours (Paralegal) |
| | | | | \$ 150.00 | Rate |
| | | | | \$ 55.00 | Total Fee (Paralegal) |
| | | | | \$ 15,623.66 | Total Fee |
| Expenses | | | | | |

Appellant First Last CAVC (xx-xxxx)

| | Start | End | Time | Hours | |
|--|-------|-----|------|--------------|-----------------------|
| | | | | \$ 50.00 | CAVC filing fee |
| | | | | \$ 500.00 | CAFC filing fee |
| | | | | \$ 16,173.66 | Total for application |


Start and end times are depicted as in the 24 hr clock

Time is depicted as hour:minutes

Hours depicted as fractions of hours (e.g. 1.25 is one hour 15 minutes)



Databases, Tables & Calculators by Subject

Change Output Options: From: 2013 To: 2023 
☐ include graphs ☐ include annual averages [More Formatting Options](#) ➡

Data extracted on: April 24, 2023 (11:34:23 AM)

CPI for All Urban Consumers (CPI-U)

Series Id: CUUR0300SA0, CUUS0300SA0
Not Seasonally Adjusted
Series Title: All items in South urban, all urban consumers, not seasonally adjusted
Area: South
Item: All items
Base Period: 1982-84=100

Download:  | [xlsx](#)

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Annual | HALF1 | HALF2 |
|------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| 2013 | 223.933 | 225.874 | 226.628 | 226.202 | 226.289 | 227.148 | 227.548 | 227.837 | 227.876 | 227.420 | 226.811 | 227.082 | 226.721 | 226.012 | 227.429 |
| 2014 | 227.673 | 228.664 | 230.095 | 231.346 | 231.762 | 232.269 | 232.013 | 231.611 | 231.762 | 231.131 | 229.845 | 228.451 | 230.552 | 230.302 | 230.802 |
| 2015 | 226.855 | 227.944 | 229.337 | 229.957 | 230.886 | 232.026 | 231.719 | 231.260 | 230.913 | 230.860 | 230.422 | 229.581 | 230.147 | 229.501 | 230.793 |
| 2016 | 229.469 | 229.646 | 230.977 | 231.975 | 232.906 | 233.838 | 233.292 | 233.561 | 234.069 | 234.337 | 234.029 | 234.204 | 232.692 | 231.469 | 233.915 |
| 2017 | 235.492 | 236.052 | 236.154 | 236.728 | 236.774 | 237.346 | 236.942 | 237.892 | 239.649 | 239.067 | 238.861 | 238.512 | 237.456 | 236.424 | 238.487 |
| 2018 | 239.772 | 241.123 | 241.595 | 242.486 | 243.279 | 243.770 | 243.776 | 243.605 | 243.640 | 244.163 | 243.484 | 242.150 | 242.737 | 242.004 | 243.470 |
| 2019 | 242.547 | 243.856 | 245.554 | 246.847 | 246.667 | 246.515 | 247.250 | 246.953 | 246.891 | 247.423 | 247.385 | 247.289 | 246.265 | 245.331 | 247.199 |
| 2020 | 248.005 | 248.412 | 248.136 | 246.254 | 245.696 | 247.223 | 248.619 | 249.639 | 250.193 | 250.542 | 250.255 | 250.693 | 248.639 | 247.288 | 249.990 |
| 2021 | 252.067 | 253.386 | 255.319 | 257.207 | 259.343 | 261.668 | 263.013 | 263.728 | 264.593 | 267.160 | 268.360 | 269.263 | 261.259 | 256.498 | 266.020 |
| 2022 | 271.634 | 274.688 | 278.598 | 279.879 | 283.307 | 287.427 | 287.608 | 287.168 | 287.656 | 288.836 | 288.991 | 288.205 | 283.666 | 279.256 | 288.077 |
| 2023 | 290.438 | 292.285 | 293.358 | | | | | | | | | | | | |

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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-