

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

TERRY L. HAMILTON	)	
Appellant,	)	
	)	
v.	)	CAVC No. 22-3726
	)	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 **\$38,293.47**.

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 ATTORNEYS' 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).

After oral argument, the Court vacated and remanded the Board's May 17, 2022 decision based upon the Board's failure to fulfill the duty to assist. See pages 1-17 of the Memorandum Decision. Mandate issued on August 26, 2024. 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. Hamilton 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. Hamilton is a person eligible to receive an award under the EAJA.

*C. The Position of the Secretary Was Not Substantially Justified*

In *White v. Nicholson*, 412 F.3d 1314 (Fed. Cir. 2004) the Federal Circuit applied the totality of the circumstances test and noted that "EAJA requires that the record must supply the evidence of the Government's substantial justification." 412 F.3d at 1316. The Secretary's position during proceedings before the Agency or the Court was not reasonable, either in law or in fact, and accordingly the Secretary's position was not substantially justified at either the administrative or

litigation stage in this case. The Board erred when it failed to fulfill the duty to assist. 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 Elcyzyn*, 7 Vet. App. at 176-177).<sup>1</sup>

Six attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Brittani Howell, Grace Hurley, April Donahower, Amy Odom, Danielle M. Gorini, and Zachary Stolz.<sup>2</sup> Attorney Brittani Howell graduated from

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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.*

Syracuse University Law School in 2017 and the *Laffey* Matrix establishes that \$538.00 is the prevailing market rate for an attorney with her experience.<sup>3</sup> Grace Hurley graduated from Boston University Law School in 2020 and the *Laffey* Matrix establishes that \$538.00 is the prevailing market rate for an attorney with her experience. April Donahower graduated from Suffolk University Law School

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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.”).

<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 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).

in 2015 and the *Laffey* Matrix establishes that \$777.00 is the prevailing market rate for an attorney with his experience. Amy Odom graduated from University of Florida Law School in 2006 and the *Laffey* Matrix establishes that \$878.00 is the prevailing market rate for an attorney with her experience. Danielle Gorini graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$878.00 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 \$878.00 is the prevailing market rate for an attorney with his experience.

Olga Tretyakova and Dalton Chapman 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>4</sup>

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$236.60 per hour for Ms. Howell, Ms. Hurley, Ms. Donahower, Ms. Gorini, and Mr. Stolz for representation services before the Court.<sup>5</sup> This rate per hour, multiplied by the number of hours billed for these five attorneys (148.10) results in a total attorneys' fee amount of \$35,040.46.

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<sup>4</sup> The U.S. Attorney's Office maintains a matrix, known as the Laffey Matrix, of prevailing market rates for attorneys by years of practice, taking into account annual price increases, pursuant to *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff'd in part by* 746 F.2d.4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021, 105 S. Ct. 3488 (1985). This Court has approved the use of the Laffey Matrix for determining the prevailing market rate for EAJA fees. *See, e.g., Wilson v. Principi*, 16 Vet. App. 509, 213 (2002) (finding the Laffey Matrix a "reliable indicator of fees...particularly as to cases involving fees to be paid by government entities or determined under fee-shifting statutes"), *vacated on other grounds by* 391 F.3d 1203 (Fed. Cir. 2004); *see also Sandoval*, 9 Vet. App. at 181 (using the Laffey Matrix as an indicator of prevailing market rate and holding that once a prevailing market rate is established, the government has the burden of producing evidence to show that the rate is erroneous.) *See* Exhibit B (Laffey Matrix).

<sup>5</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 December 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).



Appellant seeks attorney's fees at the rate of \$230.41 per hour for Ms. Odom's representation services before the Court.<sup>6</sup> This rate per hour, multiplied by the number of hours billed (7.00) results in a total attorney's fee amount of \$1,612.87.

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 (2.10) results in a total fee amount of \$378.00.

In addition, Appellant seeks reimbursement for the following expenses:

Filing Fee:	\$50.00
Flight to and from DC:	\$195.77
Hotel in DC:	\$660.37
Transportation:	\$356.00

Based upon all of the foregoing, Appellant seeks a total fee in the amount of **\$38,293.47.**

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<sup>6</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 Washington-Arlington-Alexandria, DC-MD-VA-WV. *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 December 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).

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,  
Terry L. Hamilton  
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 08/30/2024****Case No. 729165****Client: Terry L Hamilton**

			<b><u>Hours</u></b>
6/7/2022	Grace Hurley	*Attorney Reviewed Board Decision, researched caselaw, recommended an appeal to CAVC, and proposed legal arguments.	0.60
6/22/2022	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
6/27/2022	Dalton Chapman	*Paralegal Reviewed docket to ensure appeal was processed. Updated client's file	0.10
7/15/2022	Brittani Howell	*Attorney Prepared and filed notice of appearance, checked docket, and updated client file	0.10
7/15/2022	Grace Hurley	*Attorney Prepared and e-filed notice of appearance, reviewed confirmation e-mail for accuracy, and updated file.	0.20
7/19/2022	Grace Hurley	*Attorney Received and reviewed e-mails from VA serving BVA decision and transmittal for accuracy; reviewed docket; updated file.	0.10
8/22/2022	Grace Hurley	*Attorney Received and reviewed RBA certificate of service for accuracy, reviewed docket, and updated file.	0.10
8/24/2022	Olga Tretyakova	*Paralegal Review RBA pages 1-500 for dispute purposes.	0.50
8/25/2022	Olga Tretyakova	*Paralegal Review RBA pages 501-1721 for dispute purposes.	1.20
9/6/2022	Olga Tretyakova	*Paralegal Prepared the Status Letter to the client.	0.20

## Exhibit A

9/14/2022	Grace Hurley	*Attorney Received and reviewed notice to file opening brief for accuracy and content, calculated brief deadline, updated file.	0.10
9/15/2022	Grace Hurley	*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
9/22/2022	Grace Hurley	*Attorney Returned client's phone call; left voicemail for client requesting call back.	0.10
9/22/2022	Grace Hurley	*Attorney Returned client's phone call; discussed updates on the status of client's case.	0.20
9/22/2022	Grace Hurley	*Attorney Reviewed and outlined BVA decision for issues and arguments on appeal, procedural history, authority cited, and for evidence BVA relied on to prepare case map of RBA for briefing purposes.	0.40
9/26/2022	Grace Hurley	*Attorney Reviewed remainder of casemap and RBA to page 1721 for briefing purposes.	2.70
9/27/2022	Grace Hurley	*Attorney Conducted research on Euzebio and constructive possession; began drafting pbc memo.	1.50
9/27/2022	Grace Hurley	*Attorney Completed draft of pbc memo	1.80
9/29/2022	Grace Hurley	Prepared pbc memo for submission; prepared redacted RBA excerpts; e-mailed memo and RBA to VA and CLS; prepared and e-filed Rule 33 Cert; received and reviewed confirmation e-mail; drafted letter to client; updated file	0.40
9/29/2022	Brittani Howell	*Attorney Reviewed the PBC memo and added comments and suggestions throughout memo and made revisions as necessary for legal accuracy and clarity	1.60
10/13/2022	Grace Hurley	*Attorney Prepared for and participated in pre-briefing conference; drafted memo to file recapping conference; updated client file.	0.40
10/18/2022	Grace Hurley	*Attorney Called client; discussed updates on the status of client's case; drafted memo to file recapping phone call; updated client file.	0.10

## Exhibit A

11/4/2022	Grace Hurley	*Attorney Began drafting opening brief - statement of the case.	1.50
11/9/2022	Grace Hurley	*Attorney Continued drafting opening brief - completed statement of the case and began first argument section.	1.10
11/21/2022	Grace Hurley	*Attorney Conducted research on offset provision in section 1151 and continued drafting opening brief - statement of the issues, standard of review, and argument.	2.00
12/1/2022	Grace Hurley	*Attorney Continued drafting opening brief - arguments.	1.80
12/6/2022	Grace Hurley	*Attorney Completed draft of opening brief - arguments, summary of argument, conclusion.	2.20
12/15/2022	Brittani Howell	*Attorney Reviewed draft opening brief made comments and suggestions throughout identifying additional arguments that were needed and areas that needed reframing	1.60
12/16/2022	Grace Hurley	*Attorney Made suggested edits to opening brife	2.40
12/22/2022	April Donahower	*Attorney Began review of revised draft of opening brief	2.40
12/23/2022	April Donahower	*Attorney Completed review of revised draft of opening brief	1.50
12/26/2022	Grace Hurley	*Attorney Began incorporating additional edits into draft of opening brief.	1.20
12/27/2022	Grace Hurley	*Attorney Researching Federal Tort Claims Act caselaw; continued implementing additional revisions into opening brief	2.80
12/27/2022	April Donahower	*Attorney Searched RBA for pertinent evidence on etiology of dizziness and drafted note to the file re: inclusion in the opening brief	0.30

## Exhibit A

12/29/2022	Grace Hurley	*Attorney Made final edits to opening brief, proofread, and e-filed; received and reviewed confirmation e-mail for accuracy; updated client file.	1.90
2/27/2023	Grace Hurley	*Attorney Received and reviewed e-mail from VA counsel requesting consent to file unopposed motion for extension of time to file brief; responded with position; updated file.	0.10
2/27/2023	Grace Hurley	*Attorney Received and reviewed OGC's motion for extension of time to file brief for accuracy and content; updated client's case file.	0.10
2/27/2023	Grace Hurley	*Attorney Received and reviewed CAVC order granting OGC's motion for extension of time to file brief for accuracy and content; updated file.	0.10
3/10/2023	Grace Hurley	*Attorney Called client; discussed updates on the status of client's case; drafted memo to file recapping phone call.	0.10
3/23/2023	Grace Hurley	Received return phone call from client; discussed updates on the status of client's case; drafted memo to file recapping phone call.	0.10
3/23/2023	Grace Hurley	Returned client's phone call; left voicemail for client requesting a call back.	0.10
4/17/2023	Grace Hurley	Reviewed VA's brief against opening brief; drafted memo to file summarizing VA's position.	0.70
4/25/2023	Grace Hurley	Received phone call from client; discussed updates on the status of client's case; drafted memo to file recapping phone call; updated client file.	0.20
5/30/2023	April Donahower	Reviewed portion of VA's brief; researched statutes and regulations governing administrative claims under FTCA; researched statutes and caselaw concerning release of records under Privacy Act	1.70
6/1/2023	April Donahower	Reviewed cases concerning Privacy Act litigation exemption and began drafting reply brief	2.30
6/1/2023	April Donahower	Reviewed cases concerning attorney work product privilege and continued drafting reply brief	3.00

## Exhibit A

6/2/2023	April Donahower	Reviewed cases concerning CAVC factfinding re: jurisdiction, government suppression of favorable evidence, and remedy for spoliation; continued drafting reply brief	3.00
6/2/2023	April Donahower	Completed draft of reply brief	2.50
6/7/2023	Amy Odom	Began reviewing and revising reply brief	1.70
6/7/2023	Amy Odom	Coimpleted reviewing and revising draft reply brief; provided legal advice to April regarding addition edits to be made by her..	1.20
6/8/2023	April Donahower	Began revising draft reply brief	3.00
6/9/2023	April Donahower	Continued revisions to reply brief draft	3.00
6/12/2023	April Donahower	Made final edits to draft brief; checked citations to record and authority; efiled brief; updated client file	1.20
6/22/2023	April Donahower	Drafted motion for initial panel review and oral argument	2.60
6/23/2023	Grace Hurley	Called client to discuss case status updates; left voicemail for client requesting return phone call.	0.10
6/26/2023	Grace Hurley	Received return phone call from client; discussed updates on the status of client's case; drafted memo to file recapping phone call; updated client file.	0.20
6/26/2023	Zachary Stolz	Reviewed motion for oral argument	0.60
6/26/2023	April Donahower	Reviewed comments to draft motion for panel review and oral argument; edited draft motion; obtained Secretary's position on motion for oral argument; efiled motion; updated client file	0.80

## Exhibit A

6/27/2023	Grace Hurley	Reviewed two-part Record of Proceeding for completeness and e-filed letter responding to Record of Proceeding; updated client file.	0.70
6/28/2023	Grace Hurley	Received notice of assignment of case to Judge Toth; reviewed notice for accuracy; updated file.	0.10
9/19/2023	April Donahower	Reviewed Court's order to Secretary to advise regarding existence of client's tort claim file	0.10
10/2/2023	Grace Hurley	Called client to discuss case status updates; left voicemail for client requesting return phone call.	0.10
10/3/2023	Grace Hurley	Called client; discussed updates on the status of client's case; drafted memo to file recapping phone call; updated client file.	0.30
10/11/2023	April Donahower	Received email from Court with order referring case to panel; reviewed order; skimmed pleadings and Lawrence v. Wilkie decision; discussed next steps with team	0.20
11/17/2023	April Donahower	Received and reviewed court order regarding questions to anticipate at oral argument	0.10
11/17/2023	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
12/15/2023	April Donahower	Researched: meaning of "litigation" in work product doctrine, meaning of "civil action" and "civil proceeding" in Privacy Act, nature of "presentment" of Federal Tort Claims Act claim	1.70
12/15/2023	April Donahower	Reviewed parties' pleadings and order specifying topics for oral argument to begin preparing for oral argument	1.50
12/20/2023	Grace Hurley	Prepared for and participated in oral argument walkthrough.	1.00
12/20/2023	Amy Odom	Prepared for and participated in oral argument walkthrough.	1.00



## Exhibit A

12/20/2023	Grace Hurley	Began research of contents of FTCA administrative file.	0.70
12/20/2023	April Donahower	Prepared for and attended initial oral argument strategy discussion	1.80
12/20/2023	Zachary Stolz	Conducted legal research on FTCA and 1151 claims. Conducted legal research on "work product." Participated in "walk through" of oral argument with team.	3.00
1/4/2024	Grace Hurley	Continued research on typical contents of FTCA file for purposes of oral argument prep; researched internal VA guidance on developing an investigative report.	3.00
1/8/2024	Grace Hurley	Additional research regarding VA directives on administrative tort claims and drafted memo to the file regarding the same.	0.40
1/8/2024	April Donahower	Research and compilation of materials for oral argument	3.00
1/8/2024	Grace Hurley	Drafted summary of relevant research regarding contents in administrative file for oral argument preparation purposes.	1.40
1/8/2024	April Donahower	Research and compilation of materials for oral argument	2.10
1/10/2024	April Donahower	Research and compilation of materials for oral argument - contents of tort claim file. Began drafting opening statement	2.40
1/10/2024	April Donahower	Research and compilation of materials for oral argument - privacy act	3.00
1/10/2024	Grace Hurley	Began preparing for first moot.	2.80
1/11/2024	April Donahower	Continued preparing for first moot; participated in first moot and following discussion	2.20

## Exhibit A

1/11/2024	Zachary Stolz	Reviewed record, pleadings, and legal research. Participated as "judge" in first full moot. Discussed oral argument strategy with team.	2.30
1/11/2024	April Donahower	Continued drafting opening statement and prepared for first moot	2.00
1/11/2024	Amy Odom	Prepared for and participated in first moot and post-moot conference.	1.80
1/11/2024	Grace Hurley	Prepared for and participated in first moot.	1.20
1/12/2024	April Donahower	Received call from client; discussed upcoming oral argument; noted call in client's file	0.40
1/15/2024	April Donahower	Conducted and compiled research for oral argument - policy underpinnings of work-product doctrine; settlement of FTCA administrative claims; citing references of FRCP 26	2.50
1/15/2024	April Donahower	Conducted and compiled research for oral argument - what constitutes non-adversarial litigation	3.00
1/16/2024	April Donahower	Reviewed and compiled relevant CAVC cases assessing FTCA admin claim or litigation; reviewed and compiled notes on cases on waiver of work-product protection	3.00
1/16/2024	April Donahower	Reviewed and compiled notes on cases re: relationship between disclosure in criminal or admin proceedings and disclosure in civil litigation; supplemented oral argument materials re: work product protection	2.70
1/17/2024	April Donahower	Began editing opening statement; reviewed treatise material on FRCP 26; began compiling materials for oral argument binder	2.60
1/17/2024	April Donahower	Reviewed and made notes on relevant portions of record of proceedings	0.70
1/18/2024	April Donahower	Participated in second moot oral argument and subsequent discussions	1.70

## Exhibit A

1/18/2024	April Donahower	Refined oral argument materials re: nature of documents prepared on administrative tort claim; continued redrafting and revised opening statement	2.50
1/18/2024	Amy Odom	Prepared for and participated in second moot and post-moot conference.	1.30
1/18/2024	Grace Hurley	Conducted additional research in preparation for moot 2 and participated in moot 2.	2.10
1/20/2024	April Donahower	Conducted research and compiled final outlines regarding rules of civil procedure on discoverability and meaning of "reasonable anticipation" of litigation or civil action or proceeding	3.00
1/20/2024	April Donahower	Compiled final reference guide for relevant statutes, regulations, and case law; compiled oral argument binder	0.50
1/20/2024	April Donahower	Conducted research, compiled final outlines on discoverability of items in FTCA administrative claim file and procedures for properly raising limit on discovery/exemption from access under Privacy Act	3.00
1/22/2024	April Donahower	Travel to DC for oral argument	3.00
1/22/2024	April Donahower	Continued revising opening statement and reviewed oral argument binder materials to prepare for argument	1.50
1/22/2024	Grace Hurley	Traveled to DC for oral argment.	3.00
1/23/2024	April Donahower	Attended pre-argument conference and participated in oral argument	1.90
1/23/2024	April Donahower	Return travel from oral argument	3.00
1/23/2024	Grace Hurley	Attended pre-argument conference with clerk and opposing counsel; participated in oral argument as second chair.	1.90

## Exhibit A

1/23/2024	Grace Hurley	Return travel from DC after oral argument: travel to airport from hotel; flight; travel from airport home.	3.00
1/23/2024	April Donahower	Made final edits to opening statement and rehearsed opening statement	1.30
1/26/2024	April Donahower	Received and reviewed email from VA counsel requesting position on motion to amend RBA and attached settlement letter; reviewed Page v. McDonough; discussed next steps with team	0.30
1/26/2024	April Donahower	Responded to VA counsel's request for position on motion to amend RBA; updated client file	0.10
1/29/2024	April Donahower	Received, reviewed, and responded to VA counsel's email re: motion to supplement ROP; updated client file	0.10
1/31/2024	Grace Hurley	Called client to discuss oral argument; left voicemail for client requesting return phone call.	0.10
2/1/2024	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
5/23/2024	April Donahower	Reviewed Court's precedential opinion	0.30
5/24/2024	Zachary Stolz	Reviewed Court's precedential decision. Prepared letter to client re: decision. Ensured case file was updated so that client could be properly informed of case progress, disposition, and next steps.	1.10
5/30/2024	Grace Hurley	Called client; left voicemail for client requesting return phone call.	0.10
5/31/2024	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
5/31/2024	April Donahower	Reviewed precedential decision against arguments in briefing and drafted analysis of decision to client's file	0.40

# Exhibit A

6/14/2024	April Donahower	Reviewed and made notes on VA's motion for reconsideration	0.60
6/26/2024	Grace Hurley	Received and reviewed Court order denying OGC's motion for reconsideration; updated client file.	0.10
6/26/2024	Grace Hurley	Received and reviewed notice of Court's entry of judgment; updated client file.	0.10
7/11/2024	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
8/27/2024	Grace Hurley	Received and reviewed notice of Court's entry of mandate; updated client file.	0.10
8/27/2024	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
8/30/2024	Zachary Stolz	Reviewed the EAJA Petition and the Exhibit A to ensure billing accuracy	0.30
8/30/2024	Danielle Gorini	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.30

**Expenses**

Filing Fee:	\$50.00
Flight:	\$195.77
Hotel:	\$660.37
Transportation:	\$356.00

## Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
<b>Zachary Stolz</b>	<b>7.30</b>	<b>\$ 236.60</b>	<b>\$ 1,727.18</b>
<b>Olga Tretyakova</b>	<b>1.90</b>	<b>\$ 180.00</b>	<b>\$ 342.00</b>
<b>Danielle Gorini</b>	<b>1.50</b>	<b>\$ 236.60</b>	<b>\$ 354.90</b>
<b>Grace Hurley</b>	<b>50.50</b>	<b>\$ 236.60</b>	<b>\$11,948.30</b>

# Exhibit A

<b>Dalton Chapman</b>	<b>0.20</b>	<b>\$ 180.00</b>	<b>\$ 36.00</b>
<b>Brittani Howell</b>	<b>3.30</b>	<b>\$ 236.60</b>	<b>\$ 780.78</b>
<b>April Donahower</b>	<b>85.50</b>	<b>\$ 236.60</b>	<b>\$20,229.30</b>
<b>Amy Odom</b>	<b>7.00</b>	<b>\$ 230.41</b>	<b>\$ 1,612.87</b>

**Total Hours: 157.20**

**Total Fee Amount: \$38,293.47**

# LAFFEY MATRIX

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Year	Adjustmt Factor**	Paralegal/ Law Clerk	Years Out of Law School *				
			1-3	4-7	8-10	11-19	20 +
6/01/23- 5/31/24	1.059295	\$239	\$437	\$538	\$777	\$878	\$1057
6/01/22- 5/31/23	1.085091	\$225	\$413	\$508	\$733	\$829	\$997
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375

6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363
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The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., DL v. District of Columbia, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

\*  $\frac{1}{2}$ Years Out of Law School  $\frac{1}{2}$  is calculated from June 1 of each year, when most law students graduate.  $\frac{1}{2}$ 1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1).  $\frac{1}{2}$ 4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier  $\frac{1}{2}$ 1-3" from June 1, 1996 until May 31, 1999, would move into tier  $\frac{1}{2}$ 4-7" on June 1, 1999, and tier  $\frac{1}{2}$ 8-10" on June 1, 2003.

\*\* The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.



## 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'").