

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

MARGARET LASKA	)	
Appellant,	)	
	)	
v.	)	CAVC No. 22-1018
	)	EAJA
	)	
DENIS MCDONOUGH,	)	
SECRETARY OF	)	
VETERANS AFFAIRS,	)	
Appellee	)	

APPELLANT'S APPLICATION FOR AN  
AWARD OF ATTORNEYS FEES AND EXPENSES  
PURSUANT TO 28 U.S.C. § 2412(d)

Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), and the Court's Rule 39, Appellant, through counsel, seeks a total fee in the amount of **\$40,031.87**.

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).

After oral argument, in a precedential decision, the Court set aside and remanded 38 C.F.R. §3.352 (b) (2) and that portion the Board's January 27, 2022 decision denying entitlement to SMC (t) based on inadequate reasons and bases and for readjudication of the SMC (t) claim in accordance with the plain language of §114 (t). See pages 1-13 of the Decision. Mandate issued on December 2, 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 her net worth at the time her appeal was filed did not exceed \$2,000,000. 28 U.S.C. § 2412(d)(2)(B). Ms. Laska 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, Ms. Laska 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 provide an adequate statement of reasons and bases and when it improperly adjudicated the SMC (t) claim. Moreover, there is no evidence that special circumstances exist in Appellant's case that would make an award of reasonable fees and expenses unjust. 28 U.S.C. § 2412(d)(1)(A).

2. ITEMIZED STATEMENT OF SERVICES RENDERED AND AMOUNTS OF REASONABLE FEES AND EXPENSES

Appellant has claimed a reasonable amount of attorneys' fees, predicated upon "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Ussery v. Brown*, 10 Vet. App. 51, 53 (1997) (quoting *Elczyn*, 7 Vet. App. at 176-177).<sup>1</sup>

Eight attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: April Donahower, Brittani Howell, Jenna Zellmer, Kevin Medeiros, Bradley Hennings, Amy Odom, Danielle M. Gorini, and Zachary Stolz.<sup>2</sup>

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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

Attorney April Donahower graduated from Temple University Law School in 2013 and the *Laffey* Matrix establishes that \$948.00 is the prevailing market rate for an attorney with her experience.<sup>3</sup> Brittani Howell graduated from Syracuse

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

<sup>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).

University Law School in 2017 and the *Laffey* Matrix establishes that \$581.00 is the prevailing market rate for an attorney with her experience. Jenna Zellmer graduated from Boston University Law School in 2013 and the *Laffey* Matrix establishes that \$948.00 is the prevailing market rate for an attorney with her experience. Kevin Medeiros graduated from Suffolk University Law School in 2015 and the *Laffey* Matrix establishes that \$839.00 is the prevailing market rate for an attorney with his experience. Bradley Hennings graduated from Rutgers University Law School in 2006 and the *Laffey* Matrix establishes that \$948.00 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 \$948.00 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 \$948.00 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 \$948.00 is the prevailing market rate for an attorney with his experience.

Avarie Manfredi 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 \$236.49 per hour for Ms. Donahower, Ms. Howell, Ms. Zellmer, Mr. Medeiros, Mr. Hennings, Ms. Gorini,

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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).



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 seven attorneys (114.10) results in a total attorneys' fee amount of \$26,983.51.

Appellant seeks attorney's fees at the rate of \$229.78 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 (45.30) results in a total attorney's fee amount of \$10,409.03.

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 (20.00) results in a total fee amount of \$3,600.00.

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<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 October 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).

<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 October 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).

In addition, Appellant seeks reimbursement for the following expenses:

Filing Fee:	\$50.00
Flight - Ms. Odom:	\$401.81
Hotel - Ms. Odom:	\$713.76
Taxi - Ms. Odom:	\$41.68
Airport Parking: - Ms. Odom:	\$87.00
Mileage to and from Providence and Buffalo – Ms. Donahower:	
	\$582.96

Based upon all of the foregoing, the total fee is **\$42,869.75**. However, in the exercise of billing judgment, for some of the time spent preparing for the oral argument, Appellant will voluntarily reduce the total fee by 12 hours and seek a reduced fee of **\$40,031.87**.

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,  
Margaret Laska  
By Her 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 12/03/2024****Case No. 689952****Client: Margaret Laska**

			<b><u>Hours</u></b>
2/8/2022	Bradley Hennings	*Attorney Reviewed Board Decision, researched caselaw, recommended an appeal to CAVC, and proposed legal arguments.	0.60
2/18/2022	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
2/22/2022	Dalton Chapman	*Paralegal Reviewed docket to ensure appeal was processed. Updated client's file	0.10
2/23/2022	Kevin Medeiros	*Attorney Prepared and e-filed notice of appearance, reviewed docket, received and reviewed confirmation e-mail for accuracy, and updated file.	0.20
3/16/2022	Kevin Medeiros	*Attorney Received and reviewed e-mails from VA serving BVA decision and transmittal for accuracy; reviewed docket; updated file.	0.10
3/23/2022	Kevin Medeiros	*Attorney E-mailed client regarding his correct legal name in order to respond to OGC's inquiry.	0.10
4/7/2022	Kevin Medeiros	*Attorney Received and reviewed OGC's Notice of Appearance for attorney Schneider and updated file.	0.10
4/25/2022	Kevin Medeiros	*Attorney Received and reviewed RBA certificate of service for accuracy, reviewed docket, and updated file.	0.10
6/15/2022	Manfredi Avarie	*Paralegal Reviewed RBA for PBC factual development, R-1-459	1.50
6/15/2022	Manfredi Avarie	*Paralegal Reviewed RBA for PBC factual development, R-460-1313	2.80

## Exhibit A

6/16/2022	Manfredi Avarie	*Paralegal Reviewed RBA for PBC factual development, R-1314-2222	3.00
6/16/2022	Manfredi Avarie	*Paralegal Reviewed RBA for PBC factual development, R-2223-2681	1.50
6/16/2022	Manfredi Avarie	*Paralegal Reviewed RBA for PBC factual development, R-2682-3439	2.50
6/17/2022	Manfredi Avarie	*Paralegal Reviewed RBA for PBC factual development, R-3440-4355	3.00
6/17/2022	Manfredi Avarie	*Paralegal Reviewed RBA for PBC factual development, R-4356-5259	3.00
6/21/2022	Manfredi Avarie	*Paralegal Reviewed RBA for PBC factual development, R-5260-5940 (end)	2.50
6/23/2022	Kevin Medeiros	*Attorney Received and reviewed notice to file opening brief for accuracy and content, calculated brief deadline, updated file.	0.10
6/23/2022	Kevin Medeiros	*Attorney Prepared status letter to client regarding acceptance of RBA and next steps in appeal; updated file.	0.10
6/26/2022	Kevin Medeiros	*Attorney Received and reviewed Court's PBC order for accuracy, calculated PBC and opening brief deadlines, ensured no PBC conflicts, and updated file.	0.20
7/8/2022	Kevin Medeiros	*Attorney Reviewed relevant evidence flagged in casemap to prepare PBC memo.	2.80
7/8/2022	Kevin Medeiros	*Attorney Drafted and 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.	1.70
7/21/2022	Kevin Medeiros	*Attorney Prepared for and participated in PBC with VA and CLS counsels; drafted memo to file summarizing outcome; updated file.	0.90

## Exhibit A

7/29/2022	Amy Odom	*Attorney Reviewed case notes and analyzed issues on appeal in advance of litigation strategy meeting; updated file.	0.10
8/2/2022	April Donahower	*Attorney Reviewed case notes, BVA decision, and relevant statute and regulations; outlined thoughts on remand offer/approach to opening brief	0.90
8/2/2022	April Donahower	*Attorney Discussed case at litigation strategy meeting	0.10
8/2/2022	Kevin Medeiros	*Attorney Reviewed case file and drafted memo to file summarizing remand offer to determine sufficiency when discussing at litigation strategy meeting.	0.50
8/2/2022	Kevin Medeiros	*Attorney Discussed opening brief strategy with team at litigation strategy meeting; memo to file summarizing discuss and next steps.	0.20
8/2/2022	Jenna Zellmer	*Attorney Discussed litigation strategy with team	0.10
8/12/2022	Kevin Medeiros	*Attorney Reviewed and responded to OGC email regarding status of remand offer; updated file.	0.10
8/29/2022	April Donahower	*Attorney Prepared for and attended meeting to discuss opening brief strategy	0.90
8/29/2022	Amy Odom	*Attorney Prepared for conference regarding briefing strategy, including regulatory and legislative history research; participated in conference	1.50
8/30/2022	April Donahower	*Attorney Prepared and efiled notice of appearance	0.10
9/2/2022	April Donahower	*Attorney Received and reviewed email from VA counsel regarding Secretary's remand offer	0.10
9/2/2022	April Donahower	*Attorney Synthesized notes from brief strategy meeting, performed related research, and drafted note to file; emailed client with recommendation regarding VA's remand offer	0.60

## Exhibit A

9/16/2022	April Donahower	*Attorney Reviewed authority that congressional silence does not automatically equal gap filling authority; saved to client's file	0.10
10/3/2022	April Donahower	*Attorney Began drafting opening brief facts	1.80
10/3/2022	April Donahower	*Attorney Continued drafting facts	2.00
10/11/2022	April Donahower	*Attorney Reviewed legislative history of 1114(t); drafted notes to file	2.00
10/11/2022	April Donahower	*Attorney Reviewed regulatory history of 3.352; researched case law concerning statutory silence and addition of requirements by regulation; drafted notes to file	2.50
10/12/2022	April Donahower	*Attorney Drafted statement of the issue and began drafting argument	0.80
10/13/2022	April Donahower	*Attorney Continued drafting argument - plain text, (r)(2) vs. (t), Secretary construction of (t) in regulatory history of 3.352	1.50
10/13/2022	April Donahower	*Attorney Researched caselaw on presumptions re: background against which Congress legislates	1.00
10/13/2022	April Donahower	*Attorney Researched non-regulatory guidance on application of 1114(t)	1.50
10/13/2022	April Donahower	*Attorney Researched legislative history of 1114(r)(2)	1.00
10/14/2022	April Donahower	*Attorney Began drafting argument re: Secretary's interpretation of 1114 in regulatory history	2.40
10/14/2022	April Donahower	*Attorney Continued drafting argument re: Secretary's interpretation of 1114 in regulatory history	2.50

## Exhibit A

10/15/2022	April Donahower	*Attorney Continued revising argument re: regulatory rationale and drafted argument re: no deference	1.30
10/15/2022	April Donahower	*Attorney Continued revising plain language argument and began revising/adding to argument re: rationale for regulation	3.00
10/15/2022	April Donahower	*Attorney Reorganized argument; drafted prejudice argument and remedy request; began revising plain language argument	3.00
10/17/2022	Amy Odom	*Attorney Conference with April regarding potential alternative argument.	0.20
10/17/2022	April Donahower	*Attorney Reviewed Thurlow v. Wilkie discussion of retroactivity and discussed merits of related argument with Amy	0.40
10/19/2022	Amy Odom	*Attorney Reviewed April's draft brief, recommended edits, prepared memo to her regarding same.	1.70
10/19/2022	April Donahower	*Attorney Edited arguments I and III/IV per Amy's comments	2.00
10/19/2022	Jenna Zellmer	*Attorney Reviewed case file notes and second argument. Suggested ways to clarify statutory interpretation and deference.	0.50
10/19/2022	April Donahower	*Attorney Edited argument II per Amy's comments	1.70
10/19/2022	April Donahower	*Attorney Reviewed Stevenson decision (20-4870) re: agency inability to add substantive requirements to what Congress intended	0.10
10/21/2022	April Donahower	*Attorney Made additional substantive revisions to arguments; drafted summary of argument and conclusion	2.80
10/21/2022	April Donahower	*Attorney Checked citations to record and authority; performed final proofread; efiled brief; updated client file	1.50



## Exhibit A

12/13/2022	April Donahower	*Attorney Received, reviewed, and responded to VA counsel's request for position on motion to extend time to file brief	0.10
12/14/2022	April Donahower	*Attorney Received email from Court with VA counsel's motion to extend brief deadline; reviewed motion for accuracy and saved to client's file; updated client calendar	0.10
2/3/2023	April Donahower	*Attorney Received email from Court with VA's brief; saved brief to client's file; skimmed brief for overview of arguments	0.20
2/8/2023	April Donahower	*Attorney Received call from client; discussed VA's brief; updated client file	0.20
2/10/2023	April Donahower	*Attorney Reviewed VA's brief and drafted note to file re: VA's arguments and reply strategy	0.80
2/14/2023	April Donahower	*Attorney Discussed case at litigation strategy meeting	0.10
2/14/2023	Jenna Zellmer	*Attorney Discussed reply strategy with team	0.10
3/17/2023	April Donahower	Began reviewing VA's brief and outlining reply arguments	1.30
3/20/2023	April Donahower	Continued reviewing VA's brief and outlining reply arguments; reviewed portions of legislative and regulatory history cited in VA's brief	3.00
3/20/2023	Amy Odom	Reviewed parties' briefs and participated in reply brief strategy conference	1.60
3/21/2023	April Donahower	Began drafting reply arguments	1.80
3/22/2023	April Donahower	Continued drafting reply brief	1.60

## Exhibit A

3/23/2023	April Donahower	Reviewed senate committee hearing on SMC(t); drafted legislative history reply argument	2.90
3/24/2023	April Donahower	Completed legislative history reply argument and drafted portion of textual reply argument	3.00
3/27/2023	April Donahower	Completed draft of reply brief	3.00
3/30/2023	Amy Odom	Reviewed and revised draft reply brief; provided legal advice to April regarding additional revisions to be made.	1.60
3/31/2023	April Donahower	Began revising draft reply brief	2.20
4/3/2023	April Donahower	Completed revisions to reply brief	3.00
4/3/2023	April Donahower	Checked citations to record and authority; performed final proofread; efiled brief; updated client file	1.50
4/14/2023	April Donahower	Received and reviewed email from Court with record of proceedings; reviewed document for accuracy and saved to client's file	0.10
4/17/2023	April Donahower	Received and reviewed email from Court with judge assignment; updated client file	0.10
4/17/2023	April Donahower	Reviewed record of proceedings against record citations in briefing; prepared and efiled response to record of proceedings; updated client file	0.40
6/29/2023	April Donahower	Received email from Court with order submitting case to panel; reviewed order and saved to client's file; called client to provide status update; left voicemail requesting call back; noted call in client's file	0.20
6/29/2023	April Donahower	Received call from client and spouse; provided update on status of appeal and received update from client re: client's status; noted call in client's file; conferred with Amy on next steps	0.30

## Exhibit A

7/14/2023	April Donahower	Received email from Court with notice of appearance of substitute VA counsel; reviewed notice and saved to client's file	0.10
7/17/2023	Amy Odom	Conference with Zach and April regarding oral argument strategy.	0.50
7/17/2023	April Donahower	Discussed oral argument order and next steps with Zach and Amy	0.30
7/17/2023	April Donahower	Received email from Court with order scheduling oral argument; reviewed order and saved to client's file; drafted email to client re: oral argument	0.30
7/26/2023	Jenna Zellmer	Reviewed case file notes, pleadings. Participated in moot court preparations	0.80
7/26/2023	Amy Odom	Reviewed and analyzed parties' briefs and pertinent portions of RBA in preparation for oral argument walkthrough.	2.00
7/26/2023	Amy Odom	Drafted opening statement.	0.50
7/26/2023	Amy Odom	Participated in oral argument walkthrough.	0.50
7/26/2023	April Donahower	Reviewed pleadings and attended oral argument strategy discussion	1.60
7/26/2023	Zachary Stolz	Conducted legal research re: theories of statutory interpretation and Court's striking down regulations. Participated in "walk through" of oral argument. Discussed legal theories and oral argument strategy.	3.00
7/27/2023	Amy Odom	Conference with April regarding potential exhaustion issues.	0.20
7/27/2023	Amy Odom	Prepared and filed notice of appearance; updated file.	0.20

## Exhibit A

7/27/2023	April Donahower	Conference with Amy on handling exhaustion issue during oral argument	0.20
7/28/2023	April Donahower	Called client to provide status update; left voicemail requesting call back; updated client file	0.10
8/2/2023	Jenna Zellmer	Participated in first moot.	0.80
8/2/2023	Amy Odom	Prepared for and participated in oral argument moot and post-moot discussion.	1.00
8/2/2023	Amy Odom	Reviewed and analyzed pertinent portions of RBA in preparation for moot.	1.00
8/2/2023	Zachary Stolz	Reviewed pleadings and conducted further legal research. Participated in moot as "judge." Asked legal and factual questions and contributed to litigation strategy.	2.80
8/2/2023	Amy Odom	Reviewed and analyzed legislative history in preparation for first moot.	1.50
8/2/2023	Amy Odom	Conducted legal research regarding requested remedy and issue exhaustion in preparation for first moot.	2.60
8/8/2023	Amy Odom	Reviewed legal authorities and notes from first moot and prepared outline of arguments.	2.00
8/9/2023	Zachary Stolz	Prepared for and participated in second moot. Preparation included legal research and participation as "judge" asking questions and contributing to oral argument strategy.	2.20
8/9/2023	Amy Odom	Prepared for and participated in second moot argument.	2.50
8/9/2023	Jenna Zellmer	Participated in second moot	0.60

## Exhibit A

8/9/2023	April Donahower	Prepared for second moot by reviewing case notes; reviewing and diagramming language and structure of 1114; reviewing parties' pleadings; formulated questions for second moot; participated in moot and moot discussion	3.00
8/11/2023	Zachary Stolz	Discussed Veteran's health condition with Amy. Helped to draft notice to Court.	0.60
8/11/2023	Amy Odom	Reviewed memo regarding wife's phone call; conferences with Zach regarding veteran's health status; drafted and filed Solze notice regarding same.	0.80
8/11/2023	Amy Odom	Reviewed ROP regarding procedural history in preparation for oral argument.	0.80
8/11/2023	Amy Odom	Reviewed ROP regarding medical history in preparation for oral argument.	3.00
8/13/2023	April Donahower	Conferred with Amy re: client's health status and oral argument	0.20
8/13/2023	Amy Odom	Revised outline of oral argument.	0.60
8/13/2023	Amy Odom	Finished preparing binders for oral argument.	0.50
8/14/2023	April Donahower	Conferred with Amy re: client's death, substitution, and oral argument procedure	0.30
8/14/2023	April Donahower	Conferred with Amy re: revising oral argument introduction	0.30
8/14/2023	Amy Odom	Reviewed and revised motion to substitute; added argument regarding continuing with oral argument; filed notice of death and motion to substitute; updated file.	1.00
8/14/2023	Zachary Stolz	Conversations with Amy Odom concerning client's death, oral argument, and substitution.	0.50

## Exhibit A

8/14/2023	Brittani Howell	Discussed case w/ Amy, drafted notice of death, motion to substitute, and redacted exhibit for motion to sub and sent to Amy for review/submission	0.80
8/14/2023	Amy Odom	Conferences with Brittani regarding notice of death and motion for substitution.	0.20
8/14/2023	Amy Odom	Travel to Buffalo, NY for oral argument.	5.00
8/14/2023	April Donahower	Traveled to Buffalo, NY, for oral argument	6.00
8/14/2023	Amy Odom	Received and listened to voicemail from client's wife regarding client's death; note to the file re: same	0.40
8/14/2023	April Donahower	Reviewed parties' briefs, ROP, and pertinent laws to prepare for oral argument	0.90
8/14/2023	Amy Odom	Continued preparing for oral argument; conference with April and revise introduction.	2.50
8/15/2023	Amy Odom	Participated in oral agument.	1.00
8/15/2023	Amy Odom	Final preparation for oral argument -- reviewed parties' briefs, outline of ROP, and pertinent laws; practiced opening.	1.50
8/15/2023	April Donahower	Participated in oral argument	1.00
8/16/2023	Amy Odom	Travelled from Buffalo, NY.	5.00
8/16/2023	April Donahower	Traveled from Buffalo, NY, following oral argument	6.00

## Exhibit A

8/16/2023	April Donahower	Called surviving spouse/movant for substitution to provide status update; noted call in file; sent follow-up email as requested with oral argument details	0.40
8/18/2023	April Donahower	Reviewed file and updated to reflect deadlines on substitution proceeding and new case contact information	0.30
8/25/2023	April Donahower	Reviewed Veteran's death certificate received from movant for substitution; reviewed case notes to ascertain status of substitution actions at agency	0.20
9/11/2023	April Donahower	Received, reviewed, and responded to VA counsel's email regarding 8/14/23 court order	0.20
9/11/2023	April Donahower	Received and reviewed email from VA counsel regarding court's 8/14 order; updated client file	0.10
9/13/2023	April Donahower	Reviewed submissions to VA; prepared response to Court's order; prepared and redacted exhibits; compiled response and exhibits, efiled response; updated client file	1.50
9/18/2023	April Donahower	Reviewed, finalized and e-filed substitution fee agreement; updated client file	0.10
10/13/2023	April Donahower	Received email from Court with VA counsel's response to Court order; reviewed response; updated client file	0.20
11/3/2023	April Donahower	Reviewed case notes to assess case status; called client to provide status update; noted call in client's file	0.20
11/15/2023	April Donahower	Received and reviewed email from Court with order to VA to provide updates regarding substitution; updated client file	0.10
11/16/2023	April Donahower	Received and reviewed email from Court with VA counsel's notice of grant of motion for substitution at agency; called client to advise of development; updated client file	0.20
11/20/2023	April Donahower	Received email from Court with order granting motion for substitution; reviewed order and saved to client's file	0.10

## Exhibit A

4/19/2024	April Donahower	Called client to provide status update; noted call in client's file	0.10
7/8/2024	April Donahower	Discussed filing 30(b) notice re: Loper Bright/Relentless SCOTUS decision	0.10
7/8/2024	Amy Odom	Reviewed and analyzed Loper Bright decision; reviewed pertinent portions of parties' briefs; drafted Rule 30(b) notice.	1.20
7/9/2024	April Donahower	Reviewed Loper Bright SCOTUS opinion and reviewed and edited draft 30(b) notice re: Loper Bright	0.60
7/9/2024	Amy Odom	Finalized and filed notice of supplemental authority; updated file.	0.30
8/1/2024	April Donahower	Called client to provide status update; left voicemail requesting call back; noted call in client's file	0.10
9/6/2024	April Donahower	Drafted email to client regarding Court's decision	0.10
9/6/2024	Zachary Stolz	Reviewed precedential decision and discussed with oral argument team.	1.00
9/6/2024	April Donahower	Received email from Court with precedential decision; reviewed decision and compared to arguments in briefing; drafted summary and analysis of decision to client's file; updated file	1.40
9/6/2024	Amy Odom	Reviewed and analyzed precedential decision.	0.30
9/9/2024	April Donahower	Reviewed and responded to client's email about court's decision; updated client file	0.10
9/10/2024	Zachary Stolz	Prepared letter to client re: decision	0.20



# Exhibit A

9/13/2024	April Donahower	Called client to discuss court's decision; updated client file	0.20
9/30/2024	April Donahower	Received email from Court with order entering judgment; reviewed order and saved to client's file; updated file	0.10
10/15/2024	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
10/28/2024	April Donahower	Received client call; noted client questions file; referred matter to appropriate staff for follow up	0.20
11/26/2024	April Donahower	Called client to provide status update; left voicemail requesting call back; noted call in client's file	0.10
11/26/2024	April Donahower	Received return call from client; provided status update; noted call in client's file	0.10
12/3/2024	Danielle Gorini	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.20
12/3/2024	Zachary Stolz	Reviewed the EAJA Petition and the Exhibit A to ensure billing accuracy.	0.30

**Expenses**

- Filing Fee: \$50.00
- Amy Odom- Flight: \$401.81
- Amy Odom-Hotel: \$713.76
- Amy Odom-Taxi: \$41.68
- Amy Odom-Airport Parking: \$87.00
- April Donahower- Mileage: \$582.96

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
<b>Zachary Stolz</b>	<b>10.60</b>	<b>\$ 236.49</b>	<b>\$ 2,506.79</b>
<b>Manfredi Avarie</b>	<b>19.80</b>	<b>\$ 180.00</b>	<b>\$ 3,564.00</b>
<b>Kevin Medeiros</b>	<b>7.20</b>	<b>\$ 236.49</b>	<b>\$ 1,702.73</b>
<b>Jenna Zellmer</b>	<b>2.90</b>	<b>\$ 236.49</b>	<b>\$ 685.82</b>
<b>Danielle Gorini</b>	<b>1.40</b>	<b>\$ 236.49</b>	<b>\$ 331.09</b>
<b>Dalton Chapman</b>	<b>0.20</b>	<b>\$ 180.00</b>	<b>\$ 36.00</b>
<b>Brittani Howell</b>	<b>0.80</b>	<b>\$ 236.49</b>	<b>\$ 189.19</b>
<b>Bradley Hennings</b>	<b>0.60</b>	<b>\$ 236.49</b>	<b>\$ 141.89</b>
<b>April Donahower</b>	<b>90.60</b>	<b>\$ 236.49</b>	<b>\$21,425.99</b>

# Exhibit A

<b>Amy Odom</b>	<b>45.30</b>	<b>\$ 229.78</b>	<b>\$10,409.03</b>
<b>Total Hours:</b>	<b>179.40</b>		
<b>Total Fee Amount:</b>			<b>\$42,869.75</b>

# 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 +
6/01/24- 5/31/25	1.080182	\$258	\$473	\$581	\$839	\$948	\$1141
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

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)

\*  $i_c^{1/2}$  Years Out of Law School  $i_c^{1/2}$  is calculated from June 1 of each year, when most law students graduate.  $i_c^{1/2}$  1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1).  $i_c^{1/2}$  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  $i_c^{1/2}$  1-3" from June 1, 1996 until May 31, 1999, would move into tier  $i_c^{1/2}$  4-7" on June 1, 1999, and tier  $i_c^{1/2}$  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'").