

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

ELY R. ACOSTA,
Appellant

v.

ROBERT A. MCDONALD,
Secretary of Veterans Affairs,
Appellee

15-1560 EAJA

APPELLANT’S APPLICATION FOR ATTORNEY FEES AND EXPENSES

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Appellee

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Pursuant to Court Rule 39(a), Mr. Acosta, through counsel, moves for \$8,029 in attorney fees and waives all costs, for a total award of \$8,029. *See* 28 U.S.C. § 2412(d).

STATEMENT OF FACTS

Mr. Acosta, through counsel, appealed an April 8, 2015, Board of Veterans’ Appeals (Board) decision that, *inter alia*, denied entitlement to a disability rating greater than 30 percent for headaches for the period prior to November 1, 2009.

Mr. Acosta timely filed a notice of appeal to the U.S. Court of Appeals for Veterans Claims (Court), and this matter was litigated.

The Secretary served a Record Before the Agency (record) covering 1,326 pages. Mr. Acosta, through counsel, reviewed the record, and pursuant to Court Order, did draft and serve upon the Secretary’s counsel a summary of the issues based on a review of the record, an analysis of the legal issues, a statement of the facts, and legal research.

Thereafter, the parties participated in a briefing conference mediated by the Court’s Central Legal Staff. Subsequently, the parties each filed a brief, and Mr. Acosta waived his right to file a reply brief.

By decision dated July 28, 2016, the Court vacated that part of the Board's decision that denied entitlement to a disability rating greater than 30 percent for headaches for the period prior to November 1, 2009, based upon administrative error and remanded the matter for further action consistent with its decision. The Court subsequently entered judgment and issued mandate.

AVERMENTS

Mr. Acosta was a prevailing party, the Secretary's position in this matter was not substantially justified, and Mr. Acosta's net worth at the time the appeal was filed did not exceed \$2. million. Itemized statements detailing the time spent and fees sought on the case are attached. Mr. Acosta meets all of the criteria under the statute, and the Court should award fees as requested. *See* 28 U.S.C. § 2412(d).

ARGUMENT

A. Prevailing Party and Substantial Justification

A "prevailing party" is one who obtains relief in the form of a remand or reversal predicated upon administrative error, *Sumner v. Principi*, 15 Vet.App. 256, 264 (2001)(*en banc*). By decision dated *June 16, 2016*, this Court vacated and remanded the Board's decision in this matter based upon administrative error. Thus, appellant meets the first requirement for a fee award.

Mr. Acosta avers that the position of the United States in this case was not substantially justified. *Groves v. Shinseki*, 23 Vet.App. 90,93 (2009). In particular, neither the government's administrative nor its litigation position are substantially justified.

In its decision, the Court held that the Board provided an inadequate statement of reasons or bases because it conflated the requirements for a total disability rating pursuant to 38 C.F.R. §4.16(b) with the criteria for a 50 percent disability rating for headaches rated under 38 C.F.R. § 4.71 Diagnostic Code 8100. Memo Decision at 3-6. The Court also held that vacatur and remand was warranted for the Board to consider the applicability of an extraschedular rating for headaches. Memo Decision at 4-6. For these reasons, the position of the United States in this case was not substantially justified.

B. Net Worth and Itemized Statement

Mr. Acosta must establish that his net worth at the time of filing the appeal did not exceed \$2. million. The Court granted Mr. Acosta's motion for waiver of the filing fee based on his sworn declaration of financial hardship. Further, as an officer of the Court, counselor affirms that Mr. Acosta meets this requirement. Finally, attached to this petition is Mr. Acosta's declaration that he meets the net worth requirement for an award of fees and expenses under the EAJA and that he requests that his counsel file a fee petition.

Itemized statements detailing the time spent and fees sought on the case are attached.

C. Calculation of Attorney and Non-Attorney Practitioner Rate

Attached is counsel's itemized statement describing the claim for \$4,646 in fees, based on 23.0 hours of attorney work, at a rate of \$202 per hour (\$125/hour plus a COLA using the CPI-U for Miami, Florida). The midpoint of the litigation is *November 2015 (the month in which appellant's principal brief was filed)*, and the applicable CPI-U is attached.

The attorney fee formula used to compute the attorney's hourly rate is:

\$125 x CPI-U/CPI-U March 1996= attorney fee; CPI-U *October* 2015= 246.789
\$125 x 246.789/152.4= \$202.37 per hour
\$125 x 1.619 = \$202.37 per hour

Also attached is counsel's itemized statement describing the claim for \$3,383 in fees, based on 19.9 hours of non-attorney practitioner work, at a rate of \$170 per hour. *See Apodackis v. Nicholson*, 19 Vet.App. 91, 95 (2005).

As described below in greater detail, the non-attorney practitioner who worked on this matter has a distinguished educational background, considerable experience in legal research and writing, and is admitted to practice before this Court under the supervision of an attorney. *See Pentecost v. Principi*, 17 Vet.App. 257 (2003)(While it is true that non-attorney practitioners are not attorneys, it is equally true that the non-attorney practitioners who practice before this Court are not paralegals. A key distinction is that the former provides client representation whereas the latter does not.).

The enactment of section 403 of the VBA authorizes the Court to use its discretion to award reasonable fees and expenses under section 2412(d), in an amount determined to be appropriate, for the work of a non-attorney practitioner. *See Evington v. Principi*, 18 Vet.App. 331, 334-35 (2004). Appellant submits that a reasonable and appropriate fee for

the non-attorney practitioner involved in this matter is \$120 per hour adjusted by application of the appropriate percentage increase of the change in the appropriate consumer price index. This rate is based upon evidence that Mr. Gerber is an experienced advocate in veterans benefits law as described below. *Abbey v. Principi*, 17 Vet.App. 282 (2003); *Apodackis v. Nicholson*, 19 Vet.App. 91 (2005)

Mr. Gerber was awarded a Bachelor of Arts degree from American University, has studied veterans benefits law under Mr. Ravin since 2008, has extensive experience in legal research and writing, has written 160 appellate briefs before both this Court and the U.S. Court of Appeals for the Federal Circuit, and has been admitted as a non-attorney practitioner before this Court since December 1, 2008. While Mr. Gerber has never argued before this or any other Court, he is clearly an experienced advocate in veterans benefits law.

Attached to this application for fees and expenses in the appendix is documentation demonstrating that as of September 22, 2016, Mr. Gerber had drafted 160 briefs which were filed either before the Court or the U.S. Court of Appeals for the Federal Circuit.

In describing the fee formula used to compute a non-attorney practitioner's hourly rate, the Court has written, in pertinent part:

The maximum permissible hourly rate is calculated by subtracting the CPI-U for June 2001, 110.5, from the CPI-U for September 2003, 117.2. This difference, 6.7, is divided by the CPI-U for June 2001, 110.5. The resulting percentage, 6.06%, is multiplied by the prevailing market rate, \$120.00, to determine the permissible increase to the prevailing market rate, \$7.28. Finally, the permissible increase to the prevailing market rate, \$7.28, is added to the previously determined prevailing market rate, \$120.00, to determine the current prevailing market rate, \$127.28, which is the maximum permissible hourly rate for a nonattorney practitioner of Mr. Stewart's skill, reputation, and geographic area, for the period in question.

Apodackis v. Nicholson, 19 Vet.App. at 95.

In this matter, the midpoint of the litigation is November 2015 or 246.789. The maximum permissible hourly rate is calculated by subtracting the CPI-U for June 2001, 173.5, from the CPI-U for November 2015, 246.789. This difference, 73.289, is divided by the CPI-U for June 2001, 173.5. The resulting percentage, 42.24%, is multiplied by the prevailing market rate for Mr. Gerber, \$120.00, to determine the permissible increase to the prevailing market rate, \$50.68. Finally, the permissible increase to the prevailing market rate, \$50.68, is added to the previously determined prevailing market rate, \$120.00, to determine the current prevailing market rate for Mr. Gerber, \$170.68, which is the maximum permissible hourly rate for a non-attorney practitioner of Mr. Gerber's skill, reputation, and geographic area, for the period in question.

D. Distinct Contributions by Attorneys and Non-Attorney Practitioners

As previously held, "there is no per se rule against the award of fees for multiple lawyers." *Baldrige v. Nicholson*, 19 Vet.App. 227, 237 (2005).

The Court set forth that "[s]everal elements may be offered as justification for awards for multiple lawyers including (1) the complexity of the case, (2) the need for specialized knowledge, (3) whether the case presents an important issue of first impression, (4) the magnitude of the tasks involved in the litigation, and (5) identification of the specific and distinct tasks assigned to each lawyer." *Id* at 237-238.

Additionally, multiple lawyers and non-attorney practitioners were justified by the complexity of the case, the magnitude of the tasks involved in the litigation, and the specific

and distinct tasks assigned to each lawyer and non-attorney practitioner is clearly identified in this petition and attached itemization of billed time.

Mr. Acosta was represented by Sean A. Ravin, an attorney admitted to practice before this Court. Mr. Ravin has been the attorney of record and was responsible for all aspects of the litigation in this matter. All papers filed with the Court on behalf of Mr. Acosta were reviewed by Mr. Ravin.

Mr. Ravin actively participated in every stage of the litigation including initially reviewing this matter to determine whether it had legal merit; reviewing the Record Before the Agency (RBA or record) in order to identify documents missing from a copy of the claims file; analyzing the issues presented; conducting legal research; drafting an outline of the salient facts pertinent to the appeal; drafting and revising a summary of issues; preparing for and participating in a briefing conference mediated by the Court's Central Legal Staff; reviewing and editing the initial brief prepared by Mr. Gerber; reviewing the Secretary's brief; researching the authorities relied upon by the Secretary; reviewing all Court orders and notices; and communicating with Mr. Acosta regarding this matter throughout the entire process.

In addition, Mr. Ravin was assisted by Jeffrey P. Gerber, a non-attorney practitioner admitted to practice before this Court. Mr. Gerber actively participated in the litigation and distinctly contributed by writing the initial brief filed in this matter. In order to write the initial brief, Mr. Gerber reviewed the record, reviewed the conference summary, and conducted legal research on the questions presented.

The work performed by each person was distinctly different and contributed to the litigation. Neither Mr. Gerber nor Mr. Ravin performed tasks which were duplicative of each other's work.

E. Attorney-Client Communication

An attorney must keep his or her client informed as to the status of the case, inform the client of the strategy undertaken to achieve the client's objectives, respond to requests by the client for information, obtain informed consent, and explain matters to the extent necessary to permit the client to make an informed decision regarding the representation. *See American Bar Association (ABA) Model Rules of Professional Conduct (2010), Rule 1.4, Communication..*

The purpose of all communication itemized in this matter has been consistent with Rule 1.4 of the ABA Model Rules of Professional Conduct.

Specifically, counsel kept his client informed as to the status of the case, informed the client of the strategy undertaken to achieve the client's objectives, responded to requests by the client for information, obtained informed consent, and explained matters to the extent necessary to permit the client to make an informed decision regarding the representation.

The attorney-client privilege is "the client's right to refuse to disclose and to prevent any other person from disclosing confidential communications between the client and the attorney." *Black's Law Dictionary*, 7th Edition, 975. *See also American Bar Association Model Rules of Professional Conduct, Rule 1.6 - Confidentiality Of Information (2009).*

The work-product rule is “the rule providing for qualified immunity of an attorney’s work product from discovery or other compelled disclosure.” *Black’s Law Dictionary*, 8th Edition, 1639. “The exemption was primarily established to protect an attorney’s litigation strategy.” *Id.* See also *Hickman v. Taylor*, 329 U.S. 495, 67 S.Ct. 385 (1947). See also *ABA Model Rules of Professional Conduct, Rule 1.6 - Confidentiality Of Information* (2009).

Mr. Acosta asserts that attorney-client communication and attorney work-product are privileged and protected from disclosure under the EAJA. *Argoustis v. Shinseki*, 639 F.3d. 1340 (Fed.Cir.2011). In addition, most entries for client correspondence are correlated to particular stages or key events during the litigation by reference to the Court’s docket.

F. The Exercise of Reasonable Billing Discretion

1. Reductions Based on Sound Billing Judgment

Counsel for Mr. Acosta has exercised sound billing judgment and has made significant reductions in the billing itemization. Detailed itemizations clearly indicate where charges have been reduced or eliminated altogether.

All time spent reviewing court orders or routine pleadings filed with the Court has been reduced. Further, all time spent drafting and filing motions for an extension of time has been eliminated. When more than one person discussed an issue related to this matter, the time for only one person was billed.

No time has been billed for work performed on unreasonable motions; work performed at the administrative level subsequent to a Court remand; work performed prior to the existence of an attorney-client relationship; for any argument made in a reply brief

which repeats the same argument in the principal brief; for work spent on activities that are not required for preparation of the billed pleading; for irrelevant work; for any clerical work; and for efforts spent on obtaining or withdrawing Board reconsideration.

2. Reductions Based on Unsuccessful Efforts

In general, “no fee may be awarded for services on [an] unsuccessful claim.” *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983).

Counsel for Mr. Acosta has exercised sound billing discretion and has made reductions based on sound billing judgment. There were no unsuccessful efforts which were billed as part of this fee application. Further, the Court did not find any argument raised by Mr. Acosta to be without merit. Consequently, no time billed has been eliminated based upon the pursuit or presentation of unsuccessful arguments.

CONCLUSION AND PRAYER

Mr. Acosta prays that this Court find and conclude that he is entitled to reasonable legal fees and expenses in the amount of \$8,029 pursuant to the EAJA.

Respectfully submitted,

/s/ Sean A. Ravin

**Sean A. Ravin, Esq.
1550 Madruga Ave., Suite 414
Coral Gables, FL. 33146**

**Phone (202) 607-5731
Fax (202) 318-0205
email ravinesq@earthlink.net**

Date: September 23, 2016

Ely R. Acosta

Docket No. 15-1560

Itemized Timesheet

Sean A. Ravin, Esq. (SAR) – Attorney of Record

Jeffrey P. Gerber (JPG) – Non-Attorney Practitioner

Initiate Appeal

4/10/2015, Review Board decision (23 pp.) for appeal advice to client (SAR) 1.0
Review litigation folder (516 pp) for appeal advice to client (SAR) 2.0
Analyze questions presented for appeal (SAR) 0.5
Voicemail to client (SAR)(deleted 0.1) 0.0
Draft letter – written advice to client to appeal (SAR) 0.5
4/23/2015, Phone call w. client re. appeal advice (SAR) 0.3
4/24/2015, Draft notice of appeal and appearance (SAR) (deleted 0.1) 0.0
Draft letter - inform client, appeal filed, deadlines, goals of litigation (SAR)..... 0.8

Rule 10(b) Review of RBA and Orders

6/26/2015, Review RBA notice (SAR)(deleted 0.1) 0.0
Draft letter - inform client of RBA and related issues (SAR)..... 0.3
7/15/2015, Review RBA (1,326 pp.) - Per Rule 10(b) (SAR) 1.2
File RBA response (SAR)(deleted 0.1) 0.0
7/16/2015, Review notice to file brief (SAR)(deleted)..... 0.0
Draft letter - inform client of notice to file brief (SAR)..... 0.2
8/4/2015, Review order - CLS (SAR)(deleted 0.1)..... 0.0
Draft letter - inform client of order, summary and conference (SAR) 0.2

Prepare Central Legal Staff Summary

8/17/2015, Review RBA (1,326 pp.) for drafting summary (SAR) 2.1
Cont. review of RBA for drafting summary (SAR)..... 1.6
Draft outline of pertinent facts from the RBA (SAR) 1.0
Analyze issues presented for appeal (SAR) 0.2
Legal research: inadequate r&b, headaches 30-50 percent DC 8100(SAR) 1.3
Legal research: inadequate r&b (extraschedular, headaches 30 percent) (SAR) 1.2
Draft summary of issues (SAR) 1.4
Review and edit summary (SAR) 0.3
Serve summary, file service (SAR)(deleted 0.1) 0.0
8/18/2015, Draft letter - inform client of summary of issues (SAR) 0.3

Participate in Central Legal Staff Conference

8/31/2015, Review summary and RBA prior to conference (SAR) 1.1
Draft pre-conference notes, issues for further research (SAR)..... 0.3
Participate in CLS conference (SAR)..... 0.2
Draft post conference notes to file re. VA position, arguments, etc. (SAR) 0.3
Draft letter - inform client of conference outcome (SAR) 0.6

Draft Initial Brief

11/11/2015, Review and annotate Board decision, draft notes (JPG)	2.1
Review Mr. Ravin's summary of issues from briefing conference (JPG)	0.1
Began RBA review to draft statement of facts (JPG)	2.4
Began drafting statement of facts (JPG)	0.6
11/12/2015, Continued RBA review to draft statement of facts (JPG)	1.9
Continued drafting statement of facts (JPG)	0.5
Completed initial RBA review for statement of facts (JPG)	2.3
Completed initial draft of statement of facts (JPG)	1.2
Created outline of issues to raise on appeal, took notes (JPG)	0.3
Discussed issues to raise in brief with Mr. Ravin (JPG)(deleted 0.2)	0.0
Discuss case w/ Mr. Gerber (SAR)(deleted 0.2)	0.0
11/13/2015, Legal Research: "severe eco inadaptability" vs. unemployability (JPG)	0.6
Reviewed RBA for purpose of drafting argument re economic inadaptability (JPG)	0.2
Drafted argument: reasons or bases pertaining to economic inadaptability (JPG)	1.9
Legal Research: reviewed diagnostic codes for headaches, took notes (JPG)	0.3
Drafted argument: reasons or bases re prostrating attacks (JPG)	1.6
Drafted argument: reasons or bases for extraschedular referral (JPG)	1.2
Drafted argument: argument intro & conclusion, brief conclusion & prayer (JPG)	0.3
Drafted statement of issues presented and summary of argument (JPG)	0.5
11/16/2015, Review and revised draft brief for clarity and consistency (JPG)	0.7
Discuss rough draft of brief with Mr. Ravin (JPG)(deleted 0.6)	0.0
Revise brief for clarity (JPG)	1.0
Format brief and mark citations (JPG) (deleted 0.8)	0.0
Review Mr. Gerber's initial draft of brief (SAR) (deleted 0.8)	0.0
Discuss case w/ Mr. Gerber (SAR)(deleted 0.6)	0.0
Draft letter - inform client re. brief and arguments (SAR)	0.8
11/19/2015, Review stay order re: failure to file brief (JPG) (eliminated 0.1)	0.0
Discuss Court's order with Mr. Ravin (JPG) (eliminated 0.2)	0.0
Draft and file Notice of Appearance (JPG) (eliminated 0.1)	0.0
Electronically file appearance and Appellant's Brief (JPG) (eliminated 0.1)	0.0

Review and Analyze VA Brief

3/14/2016, Review VA brief (7 pp.) (SAR)	0.2
Review initial brief and record for analysis of reply (SAR)	0.3
Draft letter - inform client re. VA brief and concession (SAR)	0.3

Review and Analyze Memo Decision

7/28/2016, Review memo decision and briefs filed with court (SAR)	0.5
Draft letter to inform client of decision and consequences (SAR)	0.3

Review Orders – Draft EAJA Application

8/19/2016, Review Judgment (SAR) (deleted 0.1)	0.0
Draft letter to inform client of judgment and consequences (SAR)	0.1

8/23/2016, Draft motion to expedite mandate (SAR)(deleted 0.1)	0.0
8/24/2016, Review Order, Mandate (SAR) (deleted 0.1)	0.0
Draft letter to inform client of mandate and consequences (SAR).....	0.2
9/23/2016, Review client folder to draft and revise EAJA (reduced 0.3) (SAR)	0.6
Draft and revise EAJA application (reduced 0.3) (SAR).....	0.6
Draft letter to inform client of EAJA filing and consequences (SAR)	0.2

Certificate of Compliance with Rule 39

In compliance with Rule 39 of the Court's Rules of Practice and Procedure, I hereby certify that (1) I have reviewed the combined billing statement, and I am satisfied that it accurately reflects the work performed by all counsel and non-attorney practitioners, and (2) I have considered and eliminated all time that is excessive or redundant.

/s/ Sean A. Ravin

SEAN A. RAVIN, ESQ.

ATTORNEY OF RECORD

**1550 Madruga Avenue, Suite 414
Coral Gables, FL. 33146**

Phone: (202) 607-5731

Fax: (202) 318-0205

Date: September 23, 2016

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**ELY ACOSTA,**
Appellant**No. 15-**

v.

ROBERT A. MCDONALD,
Secretary of Veterans Affairs,
Appellee**APPELLANT'S DECLARATION AND REQUEST FOR ATTORNEY FEES**

I, **Ely Acosta**, certify under penalty of perjury under the laws of the United States of America that my net worth did not exceed U.S. currency of Two Million Dollars (\$2,000,000.00) at the time I filed my appeal with the United States Court of Appeals for Veterans Claims.

I assert that I am eligible to have attorney fees paid to my attorney under the Equal Access to Justice Act, and I hereby request that my attorney file an application for attorney fees and expenses for this matter. I understand that these fees are paid by the U.S. government to allow persons access to an attorney when they otherwise would not be able to afford one. I also understand that these attorney fees and expenses will not be taken out of any retroactive award or payment owed to me by the Department of Veterans Affairs.

X *Ely A. Acosta*
Ely Acosta

04-29-2015
Date

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Databases, Tables & Calculators by Subject

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Consumer Price Index - All Urban Consumers

Series Id: CUURA320SA0, CUUSA320SA0
 Not Seasonally Adjusted
 Area: Miami-Fort Lauderdale, FL
 Item: All items
 Base Period: 1982-84=100

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Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1996	152.0		152.4		152.6		152.4		154.6		156.4		153.7	152.4	154.9
1997	158.1		158.5		157.9		157.9		158.5		159.5	159.3	158.4	158.2	158.7
1998		160.2		160.2		160.2		160.8		161.1		161.1	160.5	160.1	160.9
1999		161.4		161.7		161.3		162.3		164.1		164.8	162.4	161.4	163.4
2000		165.9		166.9		168.0		168.4		169.6		169.5	167.8	166.7	169.0
2001		171.9		172.8		173.5		173.5		174.2		173.1	173.0	172.4	173.6
2002		175.0		175.0		174.4		175.2		177.0		177.9	175.5	174.7	176.4
2003		180.3		180.6		179.4		180.9		181.6		181.6	180.6	180.0	181.2
2004		183.6		185.2		185.6		185.1		187.0		188.6	185.6	184.5	186.6
2005		190.6		193.2		192.6		195.6		198.8		197.4	194.3	191.8	196.9
2006		202.2		203.8		203.8		205.6		204.8		205.4	203.9	202.7	205.1
2007		207.989		210.904		212.820		213.127		215.159		217.319	212.390	209.955	214.826
2008		219.082		221.324		225.079		225.473		223.699		218.324	222.119	221.180	223.059
2009		220.589		220.740		221.485		221.306		222.416		222.943	221.387	220.674	222.100
2010		222.505		222.625		222.390		222.803		223.631		224.907	223.062	222.553	223.570
2011		227.451		231.503		231.197		232.749		232.141		231.794	230.851	229.524	232.178
2012		234.043		236.095		233.991		236.110		236.793		235.023	235.207	234.526	235.889
2013		238.524		238.124		237.815		237.438		238.858		239.417	238.179	237.921	238.437
2014		242.268		244.073		243.428		243.124		244.130		242.676	243.147	242.921	243.372
2015		243.283		245.195		246.245		246.348		246.789		246.597	245.419	244.327	246.511
2016		247.126		248.741		250.208		250.188						248.156	

TOOLS

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AMERICAN UNIVERSITY

WASHINGTON, DC

THIS IS TO CERTIFY THAT

Jeffrey Gerber

HAS COMPLETED THE ACADEMIC REQUIREMENTS FOR THE DEGREE

OF

Bachelor of Arts

IN

Foreign Language & Communication Media

THE DIPLOMA IN EVIDENCE OF THIS WAS AWARDED

May 09, 2010


Adi Mema
Student Services Counselor,
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www.american.edu/aucentral

Litigation Experience of Jeffrey P. Gerber as of September 22, 2016

Summary:

Initial brief only (including Fed Circuit) 43 initial briefs

Reply brief only: 9 reply briefs

Both initial and reply brief (including Fed Circuit): 108 briefs

Total number of briefs drafted (including Fed Circuit): 160 briefs

Cases in which Mr. Gerber drafted the initial brief

Herbert Levine	09-0851	JMR
Roy Achong	09-3750	Reversed
Willie M. Simpson	09-4618	Affirmed
Haywood Stevenson	10-0100	JMR
Luis Fuentes	10-0613	JMR
Lubbock Smith	10-0818	Affirmed
Herbert Pippin	10-0895	Affirmed
Kenneth Stanley	10-1497	Vacated
George M. Smith	10-1617	JMR
Tony Golliday	10-1182	JMR
AY	10-2390	Settled
AZ	10-2393	Settled
James Willis	10-2599	JMR
Luther Capers	10-3303	JMR
Ricky Lee	10-4227	Vacated
Larry Chambers	11-0628	JMR
Kenneth McDade	11-0889	JMR
Joe Walls	11-1137	JMR
William R. Shuster	11-1154	JMR
Robert Hernandez	11-1565	Vacated
Gregory Ruffin	11-2581	JMR
Marla Gruening	11-3057	JMR
Donald Higley	11-3477	JMR
David Warren	11-3529	JMR
Imran Ali	12-1048	JMR
Houston Hinton	12-1478	Affirmed
Clint Fontenot	12-1520	JMR
Grady Clayton	12-1675	JMR
Willie A. Scott	12-1755	JMR
Jerry Johnson	12-2248	Vacated
William Shuster	12-3291	Vacated
Tulio Diaz	13-0972	JMR
Ignacio Colon	14-0469	JMR
Ronald Metcalf	14-0221	JMR
Joe Walls	14-2885	JMR
John Bartenope	14-3048	JMR
Luther Capers	14-3591	JMR

Peter Norton.....	15-0861	<u>Decision Pending</u>
Ely Acosta	15-1560	<u>JMR</u>
Pete Zolnikov	15-2910	<u>JMR</u>
Edward Kyea	15-0109	<u>JMR</u>
Thomas Stark (Fed Circuit)	2015-7074	<u>Decision Pending</u>
Randy Pederson (Fed Circuit)	2015-7077	Affirmed

Cases in which Mr. Gerber drafted the reply brief

James Cornaire	08-3303	Affirmed
Leroy Tice	09-2062	Reversed
William Mayo.....	09-4528	Vacated
Edward Fears, Jr.....	09-4553	Affirmed
Leonard Percival	10-0347	Affirmed
General L. Gaskin.....	10-0360	Affirmed
Joe R. Villalva	10-0415	Vacated
Kenneth Washburn	10-0602	Vacated
Cleveland Hall	10-2825	Vacated

Cases in which Mr. Gerber drafted both the initial and the reply brief

Samuel Taylor.....	09-4735	Vacated
Karlton Gorai	10-0085	Vacated
Warren Constable	10-0480	Vacated
Bert McWilliams.....	10-0518	Affirmed
Ginger Martina	10-0680	Vacated
Vernon Bozeman	10-1028	Vacated
Darvin Wasson.....	10-1055	Vacated
Curtis Skogsbergh.....	10-1479	Vacated
Ronald Jones.....	10-1618	Affirmed
Lowell Leonard	10-2030	Vacated
Andrew Mecca.....	12-3531	Vacated
Larry Medlock	10-2625	Vacated
Ricky Peace	11-0406	Vacated
Carlos Madrigal	11-0554	Vacated
William Irwin	11-0683	Vacated
Christopher Hawkins.....	11-1549	Vacated
Willie Macon.....	11-1566	<u>JMR</u>
Royce Oatis.....	11-1721	Vacated
Robert Shadron	11-2724	Reversed
Sarah Burcher	11-3388	Reversed
Linda Baun-Wells.....	11-3440	Vacated
Charlene Cooper	11-3085	Affirmed
Pete Zolnikov	11-3246	Vacated
Karen Ford.....	11-3600	Vacated
Jerry Smith	11-3862	Vacated
Joe Rogers	12-0191	Vacated

Charles Carroll.....	12-1614	Affirmed
Tomas Dowell	12-1906	Vacated
Darvin L. Wasson	12-3087	Vacated
Carlos Taff	13-0044	Vacated
James Wheeler	13-0188	Vacated
Emanuelito Torres.....	13-0482	Vacated
Warren Haun	13-2433	Vacated
Randy Pederson.....	13-1853	Affirmed
Ronnie Beafore.....	13-0455	Settled
Cleveland Hall	13-0950	Affirmed
Glenn Zakarian	13-1071	Vacated
Thomas Gilfus.....	13-3013	Vacated
Jose Silva	13-3323	Vacated
Thomas Stark.....	13-3549	Affirmed
Darnell Dickerson.....	14-1768	Vacated
Clint Fontenot	14-2240	JMR
Jose Ortiz-Maldonado.....	14-2297	Vacated
Royce Oatis.....	14-2861	Affirmed
Charles Jackson	14-2873	Vacated
Hector Lozado-Delgado	14-3595	Vacated
Harold L. Helscel	15-1875	Decision Pending
Samuel Hill (Fed Circuit)	2011-7016	Affirmed
Russell Young (Fed Circuit)	2011-7019	Dismissed (Appellant died)
Elmer Ayers (Fed Circuit).....	2011-7060	Affirmed
AY (Fed Circuit).....	2012-7048	Vacated
AZ (Fed Circuit).....	2012-7046	Vacated
Edward Fears (Fed Circuit)	2012-7047	Affirmed
William Irwin (Fed Circuit)	2013-7113	Reversed