

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

LIONEL SOSA)	
Appellant,)	
)	
v.)	CAVC No. 15-2153
)	EAJA
)	
ROBERT A. MCDONALD,)	
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) (1994), and the Court's Rule 39, Appellant, through counsel, seeks a total fee in the amount of **\$5,374.45**.

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).

The Appellant in the instant matter is a prevailing party. The Court vacated and remanded the Board's April 7, 2015 decision based upon the Board's failure to ensure adequate compliance with the 2013 Board order, based upon the Board's error in relying on an inadequate examination, and based upon the Board's failure to provide an adequate statement of reasons or bases. See pages 1-12 of the

Memorandum Decision. The mandate was issued on December 2, 2016. Based upon the foregoing, Mr. Sosa 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. Sosa 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. Sosa 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 and in 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. There thus is nothing substantially justified in the Board's failure to ensure adequate compliance with the 2013 Board order, in its error in relying on an inadequate examination, or in its failure to provide an adequate statement of reasons or bases. Moreover, there is no evidence that special circumstances exist in

Appellant's case that would make an award of reasonable fees and expenses unjust.

28 U.S.C. § 2412(d)(1)(A).

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

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

Five attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Jenna Zellmer, Danielle M. Gorini, Alexandra Lio, Megan Ellis, and Zachary Stolz.¹ Attorney Jenna Zellmer graduated from Boston University Law

¹"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 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

School in 2013 and the *Laffey* Matrix establishes that \$315.00 is the prevailing market rate for an attorney with her experience.² Danielle Gorini graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$455.00 is the prevailing market rate for an attorney with her experience.

Alexandra Lio graduated from Roger Williams University Law School in 2010 and the *Laffey* Matrix establishes that \$332.00 is the prevailing market rate for an attorney with her experience. Megan Ellis graduated from Boston College Law School in 2014 and the *Laffey* Matrix establishes that \$315.00 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 \$455.00 is the prevailing market rate for an attorney with his experience.

explain the role of each lawyer in the litigation and the tasks assigned to each, thereby describing the distinct contribution of each counsel.”).

²The 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 addition, one non-attorney practitioner, Landon Overby, worked on this case. Mr. Overby's credentials are set forth in detail in the Court's decision in *McDonald v. Nicholson*, 21 Vet. App. 257 (2007). He entered his appearance and started working on the case shortly after the appeal was filed in this case.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys fees at the rate of \$193.28 per hour for Ms. Zellmer, Ms. Gorini, Ms. Lio, Ms. Ellis, and Mr. Stolz for representation services before the Court.³ This rate per hour, multiplied by the number of hours billed for these five attorneys (27.30) results in a total attorney's fee amount of \$5,276.64.

In addition, Appellant seeks attorneys fees at the rate of \$163.02 per hour for representation services before the Court for Mr. Overby's time.⁴ This rate per hour,

³This 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 January 2016 the chosen mid-point date for the litigation in this case, using the method described in *Elcyszyn v. Brown*, 7 Vet. App. 170, 181.

⁴The hourly billing rate at which fees are claimed for those hours expended is based on the rate of \$120.00 per hour plus the cost-of-living allowance ("COLA"), which is adjusted according to the formula described in *Apodackis v. Nicholson*, 19 Vet. App. 91, 95-96 (2005). *McDonald v. Nicholson*, 21 Vet. App. 257, 262-63 (2007); see *Elcyszyn v. Brown*, 7 Vet. App. 170, 181 (1994) ("[T]he Court will permit-and encourage-the selection of a single mid-point date, such as the date upon which an appellant's principal brief...is filed with the Court, as the base for calculating a cost of living increase."). 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

multiplied by the number of hours billed (0.60) results in a total attorney's fee amount of \$97.81.

Based upon the foregoing, the total fee sought is **\$5,374.45**.

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,
Lionel Sosa
By His Attorneys,
CHISHOLM CHISHOLM & KILPATRICK
/s/Zachary M. Stolz
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Consumer Price Index-U for Northeast. The mid-point date in this litigation is January 2016, the period of time during which the opening brief was filed with the Court.

Exhibit A

		<u>Hours</u>
4/14/2015 LEO	Reviewed BVA decision. Researched law. Recommended case for appeal.	0.60
6/2/2015 DMG	Reviewed file and reviewed appeal documents to be filed. Filed Notice of Appeal, Notice of Appearance for Robert Chisholm as lead counsel, Fee Agreement, and Declaration of Financial Hardship with the Court. Received, reviewed, and posted Court confirmation email to the file. Updated case file	0.20
6/4/2015 DMG	Received and reviewed emails from Court with confirmation of docketed appeal documents. Checked Court's docket sheet to ensure Notice of Appeal, Notice of Appearance for Robert Chisholm, Fee Agreement, and Declaration of Financial Hardship were properly docketed with the Court. Posted emails to the file. Updated case information and case file	0.20
6/24/2015 ME	Prepared and filed notice of appearance. Reviewed docket sheet for procedural status and case notes. Updated file.	0.20
7/6/2015 AL	Review BVA decision. Prepare and efile notice of appearance. Update file and review docket to ensure proper filing.	0.20
7/27/2015 ME	Client called, gave update, answered questions, explained next steps in case	0.20
7/28/2015 ME	Received and reviewed Appellee notice of appearance, updated client file	0.10

Exhibit A

		<u>Hours</u>
8/3/2015 ME	Received and reviewed notice of filing of record before the agency, calculated RBA dispute deadline and deadline for review, updated client file and calendar	0.10
8/20/2015 ME	Reviewed and Case Mapped RBA p. 1-600	2.00
8/24/2015 ME	Reviewed and Case Mapped RBA p. 601-2100	1.90
8/25/2015 ME	Received and reviewed brief order, calculated brief due date; updated client file and calendar	0.10
8/26/2015 ME	Client called to discuss case, answered questions and gave status update	0.10
9/21/2015 ME	Received and reviewed pre briefing conference order, calculated memo due date and ensured no conflict with PBC date and time; updated client file and calendar	0.10
9/25/2015 ME	Received and reviewed email from VA counsel asking to reschedule conference, responded	0.10
9/30/2015 ME	Reviewed Board decision and re reviewed case notes, began drafting pre briefing conference memorandum	2.00
9/30/2015 ME	Finished drafting pre briefing conference memorandum	2.20
10/1/2015 ME	Received and reviewed emails from VA and Court counsel regarding rescheduling pre briefing conference, responded	0.10
10/1/2015 ME	Received and reviewed Appellee motion to reschedule pre briefing conference, checked new deadlines; updated client file	0.10

Exhibit A

		<u>Hours</u>
10/2/2015 ME	Received and reviewed new pre briefing conference order, checked calendar for conflicts; updated client file and calendar	0.10
10/5/2015 AL	Review memo for ME for proofreading purposes and suggest edits to same.	0.40
10/5/2015 ME	Made final edits to pre briefing conference memorandum, emailed same to VA and Court counsel, prepared and filed Rule 33 certificate of service, updated client file and calendar	0.30
10/9/2015 ME	Client called, gave status update	0.10
11/12/2015 ME	Reviewed Board decision, case notes, and pre briefing conference memorandum, participated in pre briefing conference, updated client file and calendar	0.60
11/12/2015 ME	Called client, discussed pre briefing conference and next steps in case	0.10
1/5/2016 ME	Client called, gave status update	0.10
1/15/2016 ME	Client called with questions, discussed next steps in case	0.20
1/25/2016 ME	Re reviewed case notes and pre briefing conference memorandum, outlined arguments for opening brief, began drafting opening brief	2.50
1/26/2016 ME	Continued drafting argument section of opening brief	2.90
1/27/2016 ME	Finished draft of opening brief	0.90
1/27/2016 ME	Incoporated edits into opening brief	0.20

Exhibit A

		<u>Hours</u>
1/28/2016 AL	Reviewed draft opening brief for ME. Check for legal accuracy , proofreading purposes. Suggest revisions to argument section and addition to statement of the case	0.60
1/28/2016 ME	Made final edits to opening brief, e-filed opening brief, updated client calendar and file	0.70
2/10/2016 ME	Client called, discussed status and process for expediting claim	0.20
2/17/2016 ME	Client called with questions about case	0.10
3/8/2016 ME	Client called, gave status update	0.10
3/28/2016 ME	Received and reviewed Appellee's motion for extension to file brief, updated client file	0.10
3/28/2016 ME	Received and reviewed Court's grant of Appellee's motion for extension, calculated new deadlines; updated client calendar to reflect new due date	0.10
4/21/2016 ME	Client called, gave status update	0.10
4/29/2016 ME	Client called to discuss motion to expedite	0.10
5/5/2016 ME	Client called for status update, answered questions about case	0.10
5/12/2016 ME	Client called, gave status update and explained next steps in case	0.10
5/13/2016 ME	Reviewed opening brief and Appellee brief, outlined arguments for reply brief, drafted reply brief	2.70

Exhibit A

		<u>Hours</u>
5/13/2016 JZ	Reviewed Megan's reply brief for proofreading purposes, cite checked, suggested revision	0.20
5/13/2016 ME	Made final edits to reply brief, e-filed reply brief, updated client file and calendar to reflect submission and new due date	0.40
5/24/2016 ME	Received and reviewed notice of filing of record of proceedings, reviewed record against evidence cited in briefs, prepared and filed response to record of proceedings, updated client file and calendar to reflect receipt and submission	0.40
6/1/2016 ME	Received and reviewed notice of judicial assignment, updated client file and calendar to reflect receipt and judge assigned	0.10
6/14/2016 ME	Client called, gave status update	0.10
8/29/2016 AL	Spoke with veteran. Explained case was with the Judge.	0.10
10/19/2016 AL	Spoke with veteran and his wife regarding status of case and timeline to decision.	0.10
11/8/2016 ZMS	Reviewed Court decision, pleadings, and notes on case. Prepared letter to client concerning Court's decision.	0.80
11/23/2016 ME	Client called, gave status update	0.10
11/29/2016 AL	Prepare motion to expedite mandate.	0.20
11/30/2016 AL	Efile motion to expedite mandate. Update file. Speak with client.	0.20
12/2/2016 AL	Review judge order expediting mandate and notice of mandate. Update file	0.20

Exhibit A

		<u>Hours</u>
12/2/2016 DMG	Prepared and e filed Notice of Appearance. Received, reviewed, and saved Court confirmation email. Checked docket sheet to ensure proper filing. Updated case file.	0.20
12/2/2016 DMG	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Petition for proofreading and billing accuracy review	0.60
12/2/2016 ZMS	Reviewed EAJA Petition for proofreading purposes and to ensure billing accuracy	0.30
	<u>27.90</u>	<u>Amount</u>
		\$5,374.45
	<u>27.90</u>	<u>Amount</u>
		\$5,374.45

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Alexandra Lio	2.00	193.28	\$386.58
Danielle M. Gorini	1.20	193.28	\$231.95
Jenna Zellmer	0.20	193.28	\$38.66
Landon E. Overby	0.60	163.02	\$97.81
Megan Ellis	22.80	193.28	\$4,406.85
Zachary M. Stolz	1.10	193.28	\$212.60

EXHIBIT B

USAO ATTORNEY'S FEES MATRIX – 2015 – 2016

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
31+ years	568
21-30 years	530
16-20 years	504
11-15 years	455
8-10 years	386
6-7 years	332
4-5 years	325
2-3 years	315
Less than 2 years	284
Paralegals & Law Clerks	154

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 www.bls.gov/ppi/#data. On that page, under "PPI Databases," and "Industry Data (Producer Price Index - PPI)," select either "one screen" or "multiple screen" and in the resulting window use "industry code" 541110 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 eliminate 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. Because the USAO rates for the years 2014-15 and earlier have been generally accepted as reasonable by courts in the District of Columbia, see note 9 below, the USAO rates for those years will remain the same as previously published on the USAO's public website. That is, the USAO rates for years prior to and including 2014-15 remain based on the prior methodology, *i.e.*, the original *Laffey* Matrix updated by the CPI-U for the Washington-Baltimore area. See *Citizens for Responsibility & Ethics in Washington v. Dep't of Justice*, --- F. Supp. 3d ---, 2015 WL 6529371 (D.D.C. 2015) and Declaration of Dr. Laura A. Malowane filed therein on Sept. 22, 2015 (Civ. Action No. 12-1491, ECF No. 46-1) (confirming that the USAO rates for 2014-15 computed using prior methodology are reasonable).
5. Although the USAO will not issue recalculated *Laffey* Matrices for past years using the new methodology, it will not oppose the use of that methodology (if properly applied) to calculate reasonable attorney's fees under applicable fee-shifting statutes for periods prior to June 2015, provided that methodology is used consistently to calculate the entire fee amount. Similarly, although the USAO will no longer issue an updated *Laffey* Matrix computed using the prior methodology, it will not oppose the use of the prior methodology (if properly applied) to calculate reasonable attorney's fees under applicable fee-shifting statutes for periods after May 2015, provided that methodology is used consistently to calculate the entire fee amount.
6. 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.
7. 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).
8. The USAO anticipates periodically revising the above matrix if more recent reliable survey data becomes available, especially data specific to the D.C. market, and in the interim years updating the most recent survey data with the PPI-OL index, or a comparable index for the District of Columbia if such a locality-specific index becomes available.
9. Use of an updated *Laffey* Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the USAO as evidence of prevailing market rates for litigation counsel in the Washington, D.C. area. See *Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n.14, 1109 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996). Most lower federal courts in the District of Columbia have relied on the USAO Matrix, rather than the so-called "*Salazar* Matrix" (also known as the "LSI Matrix" or the

“Enhanced *Laffey* Matrix”), as the “benchmark for reasonable fees” in this jurisdiction. *Miller v. Holzmman*, 575 F. Supp. 2d 2, 18 n.29 (D.D.C. 2008) (quoting *Pleasants v. Ridge*, 424 F. Supp. 2d 67, 71 n.2 (D.D.C. 2006)); *see, e.g., CREW v. U.S. Dep’t of Justice*, --- F.Supp.3d ---, 2015 WL 6529371 (D.D.C. 2015); *McAllister v. District of Columbia*, 21 F. Supp. 3d 94 (D.D.C. 2014); *Embassy of Fed. Republic of Nigeria v. Ugwuonye*, 297 F.R.D. 4, 15 (D.D.C. 2013); *Berke v. Bureau of Prisons*, 942 F. Supp. 2d 71, 77 (D.D.C. 2013); *Fisher v. Friendship Public Charter School*, 880 F. Supp. 2d 149, 154-55 (D.D.C. 2012); *Sykes v. District of Columbia*, 870 F. Supp. 2d 86, 93-96 (D.D.C. 2012); *Heller v. District of Columbia*, 832 F. Supp. 2d 32, 40-49 (D.D.C. 2011); *Hayes v. D.C. Public Schools*, 815 F. Supp. 2d 134, 142-43 (D.D.C. 2011); *Queen Anne’s Conservation Ass’n v. Dep’t of State*, 800 F. Supp. 2d 195, 200-01 (D.D.C. 2011); *Woodland v. Viacom, Inc.*, 255 F.R.D. 278, 279-80 (D.D.C. 2008); *American Lands Alliance v. Norton*, 525 F. Supp. 2d 135, 148-50 (D.D.C. 2007). *But see, e.g., Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 13-15 (D.D.C. 2000). The USAO contends that the *Salazar* Matrix is fundamentally flawed, does not use the *Salazar* Matrix to determine whether fee awards under fee-shifting statutes are reasonable, and will not consent to pay hourly rates calculated with the methodology on which that matrix is based.