

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

DAVID P. HILL,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 14-1811
)	
ROBERT D. SNYDER,)	
Acting Secretary of Veterans Affairs,)	
)	
Appellee.)	

TABLE OF CONTENTS FOR APPELLANT’S APPLICATION FOR AWARD OF REASONABLE ATTORNEYS’ FEES AND EXPENSES PURSUANT TO 28 U.S.C. § 2412(d)

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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

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Appellant,)	
)	
v.)	
)	Vet. App. No. 14-1811
ROBERT D. SNYDER,)	
Secretary of Veterans Affairs,)	
Appellee.)	

APPELLANT’S APPLICATION FOR AN AWARD OF REASONABLE 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 U.S. Vet. App. Rule 39, Appellant, David P. Hill, applies for an award of reasonable attorneys’ fees and expenses in the amount of **\$ 33,856.63**.

PROCEDURAL HISTORY

On April 7, 2014, the Board of Veterans’ Appeals (“Board” or “BVA”) issued a decision that, *inter alia*, denied Appellant entitlement to service connection for an acquired psychiatric disorder, to include posttraumatic stress disorder (“PTSD”), and found that new and material evidence had not been submitted to reopen a previously denied claim for service connection for a low back disability. Appellant filed a timely Notice of Appeal to this Court on June 11, 2014.¹

On August 11, 2014, the Secretary served on Appellant’s counsel the

¹ The appeal did not encompass the part of the Board’s decision that dismissed Appellant’s claim for entitlement to service connection for a heart disability. That part of the decision remanding Appellant’s claim for entitlement to a disability rating in excess of 10% for a service-connected right knee condition was also not before the Court. See *Breeden v. Principi*, 17 Vet. App. 475, 478 (2004).

1,824-page Record Before the Agency (“RBA”). On September 4, 2014, the Court issued a Notice to file Appellant’s brief within sixty days. On September 12, 2014, the Court issued an Order scheduling an October 9, 2014, Rule 33 Staffing Conference. Pursuant to the Court’s Order, Appellant’s counsel prepared a Rule 33 Summary of the Issues summarizing the legal errors committed by the Board in the decision on appeal, which she served on counsel for the Secretary and Central Legal Staff (“CLS”) counsel on September 25, 2014. On October 9, 2014, the Rule 33 conference was held as scheduled, but failed to result in a joint disposition.

Accordingly, Appellant filed his 30-page brief with the Court on December 17, 2014. In his brief, Appellant first argued that the Board erred in finding that his psychiatric disability was not aggravated by service. Specifically, Appellant argued that the Board clearly erred in finding that Appellant’s psychiatric disability did not increase in severity during service because all the record evidence bearing on whether there was an increase supported Appellant’s claim. Appellant Brief (“App. Br.”) at 15-17. Appellant argued that the Board misinterpreted the March 2010 examiner’s report when it reached its conclusion that the weight of the evidence did not show Appellant’s disorder increased in severity during service. App. Br. at 17. That report did not find that there was not an in-service increase in symptoms, but that the in-service increase was caused by factors other than the in-service lightning strike. App. Br. at 17.

Next, Appellant argued that because the evidence established that there

was an in-service increase in disability, the presumption of aggravation under 38 U.S.C. § 1153 applied because the period of active duty for training (“ACDUTRA”) during which he was injured by the lightning strike constituted “active duty” for purposes of that statute. App. Br. at 18. Appellant noted that in 2003, the Regional Office awarded service connection for a knee injury that he sustained during that period of ACDUTRA. App. Br. at 18. Appellant contended that the ACDUTRA period therefore constituted active service under 38 U.S.C. § 1153, because he was engaged in “active duty for training which he was disabled” By an “injury incurred in the line of duty.” See 38 U.S.C. § 101(24)(B); see also *Donnellan v. Shinseki*, 24 Vet. App. 167, 172 (2010) App. Br. at 18. Appellant concluded that therefore, because VA had not rebutted the presumption of aggravation with clear and unmistakable evidence, the Court should reverse the Board’s finding that his psychiatric disability was not aggravated by service. App. Br. at 18-19; see *Horn v. Shinseki*, 25 Vet. App. 231, 242 (2012).

Next, Appellant argued that the Court should reverse the Board’s decision regarding his lower-back claim because it was based on clearly erroneous findings of fact and contravened the Court’s ruling in *Justus v. Principi*, 3 Vet. App. 510 (1992); App. Br. at 21-28. Appellant first argued that the lightning strike articles he submitted were new and material because the articles made a causal link between his back disability and the in-service lightning strike more plausible by showing that such a link was common in other similar cases. App. Br. at 23-

24; 38 C.F.R. § 3.156(a) Appellant then argued that he provided new and material testimony that the lightning strike threw him 25 feet and caused him to hit a tree. App. Br. at 24-27. Appellant argued that the Board erred when it disregarded the rule that new testimony must be presumed credible unless it was inherently false or untrue because Appellant's testimony was in line with prior statements given by doctors, commanding officers, and members of his unit; and also consistent with the experience of at least one other soldier at the same scene. *Duran v. Brown*, 7 Vet. App. 216, 220 (1994); *Justus*, 3 Vet. App. at 513; App. Br. at 26-27.

Appellant argued in the alternative that the Board inadequately explained its refusal to reopen the lower back claim because it concluded that Appellant's new testimony as contradicted by eyewitness accounts and prior testimony without identifying any of the allegedly contradictory prior statements. App. Br. at 28; 38 U.S.C. § 7104(d)(1). Appellant argued that the Board failed to state the reasons for its findings in a way that made it possible for Appellant to understand the precise basis for its decision because it did not identify which eyewitness statements or which prior statements the new testimony supposedly contradicted. *Buczynski v. Shinseki*, 24 Vet. App. 221, 224 (2011); App. Br. at 28. Therefore, Appellant contended that if the Court did not reverse the Board's finding that new and material evidence had not been received, it should still remand the matter for the Board to provide an adequate statement of reasons or bases for its findings. App. Br. at 28-29.

On April 2, 2015, the Secretary filed his responsive brief with the Court. In his brief, the Secretary first conceded that the Court should remand the lower back claim because the Board erred in finding that the lightning strike articles submitted by Appellant were new but not material. *Shade v. Shinseki*, 24 Vet. App. 110, 121 (2010); Sec. Br. at 8-9. However, the Secretary maintained that the Board did not err in finding that Appellant's new testimony was not material. Sec. Br. 7-8. The Secretary argued that the testimony was inconsistent with other lay evidence of record describing the lightning strike, and was therefore "patently incredible" so that the Board was not required to presume its credibility under *Justus*, 3 Vet. App. at 510. Sec. Br. 8; *Godfrey v. Brown*, 7 Vet. App. 398, 407 (1995).

Next, the Secretary conceded that the Court should remand the psychiatric claim because the Board failed to provide adequate reasons or bases for its determination that Appellant's pre-existing psychiatric disorder was not aggravated by service. Sec. Br. at 12-13; 38 U.S.C. § 7104(d)(1). The Secretary conceded that the presumption of aggravation under 38 U.S.C. § 1153 applied to Appellant's claim and that the Board mischaracterized the VA examiner's opinion and failed to adequately address the favorable evidence of record. Sec. Br. 10-11. However, the Secretary disagreed that reversal of the Board's decision was appropriate, and contended that the entire record did not show an in-service increase in Appellant's symptoms following the lightning strike. Sec. Br. at 13.

On May 28, 2015, Appellant filed his 15-page reply brief. In his reply brief,

Appellant first argued that the Secretary incorrectly applied the Court's reversal legal standard when the Secretary argued that the Court should remand, not reverse, the Board's decision denying entitlement to service connection for aggravation of Appellant's psychiatric disability. App. Rep. Br. at 2. The Board did explain its decision but the explanation was contrary to the record and the only permissible reading of the record was that symptoms did increase in severity after the lightning strike. Appellant's Reply Brief (App. Rep. Br.) at 2-3. Appellant pointed to evidence that clearly showed increased psychiatric symptoms since the lightning strike: (1) members of his unit that agreed that Appellant was a totally different person both mentally and physically because of the strike, (2) the VA examiner concluded that Appellant's psychiatric disorder increased in severity, and (3) private treatment records stated that Appellant's PTSD became much worse after the lightning strike. App. Br. at 3.

Regarding the low back claim, Appellant argued that the Secretary's reliance on the exception to the *Justus* presumption was misplaced because Appellant's assertion that he was thrown into a tree by a lightning strike was not inherently false or untrue. 3 Vet. App. at 513; App. Rep. Br. at 11-12. Furthermore, the Secretary mischaracterized Appellant's evidence when he stated that the record showed Appellant was "not thrown 25 feet," as none of the material cited by the Secretary affirmatively contradicted Appellant's claim. App. Rep. Br. at 12. Finally, Appellant argued that there was not a single document that stated Appellant was not thrown 25 feet, or that he did not strike a tree.

Therefore, Appellant argued that the *Justus* presumption of credibility applied to his new testimony because it was both new and material under 38 C.F.R. § 3.156(a). App. Rep. Br. at 13-14. Appellant further maintained that the only permissible view of the internet articles he submitted was that they were also material under section 3.156(a); therefore, reversal of the Board's decision refusing to reopen the claim was necessary. App. Br. at 9-10.

On July 31, 2015, the Court issued a Memorandum Decision (hereinafter "Mem. Dec.") the Court disagreed with the Secretary's concession that the Board erred in failing to afford Appellant with the presumption of aggravation because Appellant did not establish that his low back condition both worsened during his period of ACDUTRA and was caused by the period of ACDUTRA. Mem. Dec. at 4. However, the Court remanded the Board's decision because it did not provide an adequate statement of reasons or bases for characterizing the March 2010 VA psychiatric examination as negative evidence against Appellant's claim. Mem. Dec. at 5; 38 U.S.C. § 7104(d)(1). The Board also agreed with the parties that the Board failed to provide an adequate statement of reasons or bases for finding that the internet articles were not new and material evidence sufficient to reopen Appellant's lower back claim. Mem. Dec. at 5; 38 U.S.C. § 7104(d)(1); 38 C.F.R. § 3.156(a).

On August 3, 2015, Appellant filed a motion for reconsideration, or in the alternative, a panel hearing. Appellant argued in the motion that the Court overlooked Appellant's argument that he was entitled to the presumption of

aggravation under 38 U.S.C. § 1153 because he had previously been granted service connection for a knee injury incurred during the ACDUTRA period at issue, and that period therefore constituted “active duty” under section 1153. The Court granted the motion for reconsideration on August 31, 2015, withdrew its July 31, 2015 decision, and issued a new Memorandum Decision in its stead (Mem. Dec. 2). In its August 2015 Memorandum Decision, the Court again concluded that the presumption of aggravation did not apply to Appellant’s period of ACDUTRA. Mem. Dec. 2 at 5-6. However, the Court vacated and remanded the Board’s decision for the same reasons it articulated in its July 31, 2015 Memorandum Decision.

On September 21, 2015, Appellant filed a motion for review by panel. The Court construed the motion as a motion for reconsideration, and on October 30, 2015, the Court granted the motion for reconsideration, withdrew the August 31, 2015 Memorandum Decision, and issued a new Memorandum Decision (Mem. Dec. 3) in its stead. In its October 30, 2015 Memorandum Decision, the Court once again concluded that the presumption of aggravation under 38 U.S.C. § 1153 did not apply to Appellant’s period of ACDUTRA. Mem. Dec. 6. Nonetheless, the Court vacated and remanded the Board’s decision for the same reasons it articulated in its July 31, 2015 and August 31, 2015 Memorandum Decisions.

On November 18, 2015, Appellant renewed his motion for a panel decision, which was granted on January 13, 2016. On March 29, 2016, the Court issued an Order directing the parties to submit supplemental memoranda of law

addressing (1) whether the Board found that Appellant was a “veteran” under 38 U.S.C. § 101, and if so, whether that was a favorable finding of fact that was not subject to the Court’s review; (2) whether a claimant’s veteran status by virtue of a disability incurred or aggravated by a period of ACDUTRA entitles the claimant to the presumption of aggravation for a different disability claimed to have been aggravated during the same period of ACDUTRA; and (3) whether application of the presumption of aggravation requires that an entrance examination be conducted in conjunction with a period of ACDUTRA? On April 28, 2016, the parties each filed supplemental memoranda of law, in which they agreed that (1) the Board made a favorable factual finding that Appellant had achieved veteran status and that finding could not be disturbed by the Court; (2) a claimant who achieves veteran status by virtue of a disability incurred or aggravated during a period of ACDUTRA is entitled to the presumption of aggravation for other disabilities claimed to have been aggravated during that period of ACDUTRA; and (3) evidence other than an entrance examination may suffice for application of the presumption of aggravation. On July 28, 2016, oral argument was held before a panel of the Court.

On October 7, 2016, the panel withdrew the October 30, 2015 Memorandum Decision and issued a new decision in its stead (Panel Dec.). The Court held that (1) where VA determined that Appellant established veteran status for a period of ACDUTRA by establishing service connection for one disability, Appellant may take advantage of the presumption of aggravation for

other preexisting disabilities claimed to have been aggravated during the same period of ADCUTRA; and (2) an entrance examination given prior to the period of ADCUTRA was not necessary for the application of the presumption of aggravation where the baseline severity of the preexisting condition can be determined through other contemporaneous evidence. Panel Dec. 6-14. The Court further found that the May 2010 VA examiner's opinion was unclear, and remanded Appellant's claim for a psychiatric disability for the Board to request clarification or obtain an entirely new medical opinion. Panel Dec. 15. In addition, the Court reversed the Board's conclusion that new and material evidence had not been submitted to reopen Appellant's claim for back disability. Panel Dec. 14-15. The Court found that the internet article that states that a lightning strike may affect the musculoskeletal system was material on its face and therefore satisfied the requirements of 38 C.F.R. § 3.156(a). Panel Dec. 14. In addition, the Court found that the Board's finding that Appellant's new testimony regarding the effect of the lightning strike was patently incredible was clearly erroneous. *Id.*

On October 31, 2016, the Court entered Judgment pursuant to U.S. Vet. App. Rule 36. On January 4, 2017, the Court entered Mandate pursuant to U.S. Vet. App. Rule 41(a), effective January 3, 2017.

ARGUMENT

I. APPELLANT IS A PREVAILING PARTY AND ELIGIBLE TO RECEIVE AN AWARD.

Under 28 U.S.C. § 2412(d), a court shall award to a prevailing party fees and other expenses incurred by that party in any civil action, including proceedings for judicial review of agency action. To obtain “prevailing party” status, a party need only to have obtained success “on any significant issue in litigation which achieve[d] some of the benefit ... sought in bringing the suit.” *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993) (quoting *Hudson, Texas State Teachers Assn. v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791-92 (1989)).

In this case, Appellant is a prevailing party entitled to an award of fees and costs because the Court set aside that portion of the Board’s decision denying service connection for aggravation of a psychiatric disability based on administrative error, reversed that portion of the Board’s decision that found that new and material evidence had not been received to reopen Appellant’s claim for a low back disability based on the Board’s clearly erroneous fact finding, and remanded the case for further development and adjudication in accordance with its decision. See *Zuberi v. Nicholson*, 19 Vet. App. 541 (2006); *Sumner v. Principi*, 15 Vet. App. 256 (2001) (en banc). This Court-ordered relief creates the “material alteration of the legal relationship of the parties’ necessary to permit an award of attorney’s fees.” *Buckhannon Bd. and Care Home, Inc. v. West Virginia Dep’t of Health and Human Res.*, 532 U.S. 598, 604 (2001) (quoting *Garland Indep. Sch. Dist.*, 489 U.S. at 792).

Appellant is a party eligible to receive an award of reasonable fees and expenses because his net worth did not exceed \$2 million (two million dollars) at

the time this civil action was filed. As an officer of the Court, the undersigned counsel hereby states that Appellant's net worth did not exceed \$2 million (two million dollars) at the time this civil action was filed, nor did he own any unincorporated business, partnership, corporation, association, unit of local government, or organization, of which the net worth exceeded \$7 million (seven million dollars) and which had more than 500 employees. See *Bazalo v. Brown*, 9 Vet. App. 304, 309, 311 (1996). In addition, Appellant filed a Declaration of Financial Hardship, which was accepted for filing by the Court on June 11, 2014. See *Owens v. Brown*, 10 Vet. App. 65, 67 (1997).

II. THE POSITION OF THE SECRETARY OF VETERANS AFFAIRS WAS NOT SUBSTANTIALLY JUSTIFIED.

The Secretary can defeat Appellant's application for fees and costs only by demonstrating that the government's position was substantially justified. See *Brewer v. American Battle Monument Commission*, 814 F.2d 1564, 1566-67 (Fed. Cir. 1987); *Stillwell v. Brown*, 6 Vet. App. 291, 301 (1994). The U.S. Supreme Court has held that for the position of the government to be substantially justified, it must have a "reasonable basis both in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988); accord *Beta Sys. v. United States*, 866 F.2d 1404, 1406 (Fed. Cir. 1989).

In this case, the Secretary's administrative and litigation positions were not substantially justified. As described more fully in the "Procedural History," *supra*, the Court reversed, vacated, and remanded the Board decision based on

administrative errors. Specifically, the Court set reversed the Board's clearly erroneous finding that new and material evidence had not been received to reopen the claim for a low back disability because, contrary to the Board's explicit finding, the internet articles of record satisfied 38 C.F.R. § 3.156(a). In addition, the Court vacated that portion of the Board's decision that denied entitlement to aggravation of a psychiatric disability because the Board erred in relying on the unclear May 2010 VA examiner's opinion to deny the claim. These errors, and the other errors made by the Board, had no reasonable basis in fact or in law.

In addition, the litigation position of the Secretary, who maintained that reversal was not warranted of the Board's finding that new and material evidence had not been received, had no reasonable basis in fact or in law.

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

An itemized statement of the services rendered and the reasonable fees and expenses for which Appellant seeks compensation is attached to this application as Exhibit A. Included in Exhibit A is a certification that lead counsel has "(1) reviewed the combined billing statement and is satisfied that it accurately reflects the work performed by all counsel and (2) considered and eliminated all time that is excessive or redundant." *Baldrige and Demel v. Nicholson*, 19 Vet. App. 227, 240 (2005). In the exercise of billing judgment, Appellant has eliminated **131.1** hours of attorney time and **7.6** hours of law clerk time from this itemized statement and this fee petition.

Appellant seeks attorneys' fees at the following rates for representation in the Court of Appeals for Veterans Claims:²

<u>Name</u>	<u>Rate</u>	<u>Hours</u>	<u>Fee Amount</u>
Ronald B. Abrams (1974 law graduate)	\$197.08	0.2	\$ 39.42
Benjamin C. Block (2001 law graduate)	\$197.08	6.5	\$ 1,281.02
Mark Mosier (2004 law graduate)	\$197.08	3.2	\$ 630.66
Amy F. Odom (2006 law graduate)	\$197.08	30.4	\$ 5,991.23
Patrick Berkshire (2009 law graduate)	\$197.08	7.5	\$ 1,478.10
Kevin King (2010 law graduate)	\$197.08	113.8	\$ 22,427.70

² A rate in excess of \$125 per hour for the attorneys for Appellant in this case is justified based on the increase in the cost of living since the EAJA was amended in March 1996. See 28 U.S.C. § 2412(d)(2)(A)(ii). The \$125 attorney fee rate, adjusted for inflation for the Washington Metropolitan Area, was \$197.08 in November 2014, the month before Appellant filed his initial brief. See Bureau of Statistics Data, CPI-U (Exhibit B). This rate was calculated by using the CPI-U for the Washington-Baltimore-D.C.-MD-VA area for inflation between March 1996 and November 1996 and by using the CPI-U for Washington-Baltimore-D.C.-MD-VA-W.VA area for inflation between November 1996 and November 2014. See Exhibit B; *Mannino v. West*, 12 Vet. App. 242 (1999). The market rates for Appellant's attorneys exceeded \$197.08 per hour during the relevant time period. See *Covington v. District of Columbia*, 839 F. Supp. 894, 904-05 (D.D.C. 1993), *aff'd*, 58 F.3d 1101 (D.C. Cir. 1995). The prevailing market rate for the work done by paralegal Clara Javier and law clerks Shannon Beydler Tivara Grant was at least \$150.00 per hour from June 1, 2014, to May 31, 2015, and law clerk Brendan Ryan was at least \$157.00 from June 1, 2016 to present. See *Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996); see also *Richlin Security Service Co. v. Chertoff, Secretary of Homeland Security*, 553 U.S. 571 (2008).

Clara Javier (paralegal)	\$150.00	0.8	\$ 120.00
Shannon Beydler (law clerk)	\$150.00	3.0	\$ 600.00
Tivara Grant (law clerk)	\$150.00	2.3	\$ 345.00
Brendan Ryan (law clerk)	\$157.00	5.5	\$ 863.50
SUBTOTAL:			\$ 33,776.63

The reasonable expenses for which Appellant seeks compensation are:

<u>Nature of Expense</u>	<u>Expense Amount</u>
Postage and Federal Express Charges	\$ 45.00
Photocopying	\$ 40.00
SUBTOTAL: \$ 80.00	
TOTAL: \$ 33,856.63	

WHEREFORE, Appellant respectfully requests that the Court award attorneys' fees and expenses in the total amount of **\$ 33,856.63**.

Respectfully submitted,

FOR APPELLANT:

Date: January 26, 2017

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Counsel for Appellant

EXHIBIT A

**NVLSP and Covington & Burling Staff Hours for David P. Hill
Vet. App. No. 14-1811**

Date: 5/18/2014 1.1 Staff: Amy F. Odom
Review and analyze BVA decision, conduct legal research, and prepare memorandum regarding issues to raise on appeal.

Date: 5/20/2014 0.2 Staff: Ronald B. Abrams
Review BVA decision and A. Odom's memorandum regarding issues to raise on appeal and provide legal advice to A. Odom regarding additional issues to raise.

Date: 5/21/2014 0.2 Staff: Clara Javier
Draft letter to client regarding BVA decision, issues to raise on appeal, and next steps. Submit to attorney for review.

Date: 5/23/2014 0.2 Staff: Amy F. Odom
Telephone conference with client regarding issues to raise on appeal and next steps.

Date: 5/28/2014 0.2 Staff: Clara Javier
Draft letter to client regarding case initiation, with documents for client to execute and return. Submit to attorney for review.

Date: 6/11/2014 0.2 Staff: Clara Javier
Draft Notice of Appeal and Notices of Appearance and provide to attorney for review.

Date: 6/12/2014 0.2 Staff: Clara Javier
Draft letter regarding status of appeal, including informing client that a Notice of Appeal and Notices of Appearance have been filed with the Court. Submit to attorney for review.

Date: 9/2/2014 0.6 Staff: Amy F. Odom

Review of 1,824-page Record Before the Agency (RBA) to ensure legibility and completeness (0.6); draft memorandum to S. Beydler regarding legal research project pertaining to veteran status issues **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 9/8/2014 3.0 Staff: Shannon Beydler

Conduct legal research regarding whether being service-connected for one disability that was incurred/aggravated in ACDUTRA or INACDUTRA is enough to be considered as a "veteran" for all disabilities incurred/aggravated by service to assist in preparation of Rule 33 summary.

Date: 9/23/2014 1.4 Staff: Amy F. Odom

Review and analyze RBA, pp. 1-190, and outline same in preparation for drafting Rule 33 summary of issues.

Date: 9/25/2014 5.6 Staff: Amy F. Odom

Review and analyze RBA, pp. 191-362, and outline same in preparation for drafting Rule 33 summary (1.0); review and analyze RBA, pp. 363-end, in preparation for drafting Rule 33 summary (2.9); draft and finalize Rule 33 summary of issues (1.6); draft and finalize Rule 33 certificate of service (0.1).

Date: 10/6/2014 0.4 Staff: Amy F. Odom

Telephone conference with and draft email to client regarding status of appeal, issues raised in Rule 33 summary, and settlement authority.

Date: 10/9/2014 0.5 Staff: Amy F. Odom

Prepare for and participate in Rule 33 conference, including review of Rule 33 summary of issues and pertinent portions of RBA.

Date: 10/10/2014 0.2 Staff: Amy F. Odom
Telephone conference with client status of appeal and outcome of Rule 33 conference - Secretary to defend low back, argue for remand of psychiatric claim.

Date: 10/27/2014 0.2 Staff: Amy F. Odom
Telephone conference with client regarding status of appeal.

Date: 11/10/2014 0.0 Staff: Amy F. Odom
Draft and finalize motion for extension of time to file brief **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 11/17/2014 0.0 Staff: Kevin King
Correspond with A. Odom, B. Block, and K. Voss regarding engagement letter and next steps for representation; complete and transmit forms required to represent Mr. Hill, including pro hac vice application and notice of appearance; perform mandatory CAVC training module re: e-filing, file e-filing registration form; review Rule 33 memorandum and BVA decision **[3.4 hours eliminated in the exercise of billing judgment]**.

Date: 11/17/2014 0.0 Staff: Amy F. Odom
Email exchanges with co-counsel regarding status of appeal and review and propose edits to co-counsel's retainer agreement **[0.3 hours eliminated in the exercise of billing judgment]**.

Date: 11/18/2014 0.0 Staff: Kevin King
Correspond with attorneys A. Odom, B. Block, and K. Voss regarding content of engagement letter and other preliminary matters; revise engagement letter; correspond with CAVC Clerk's Office regarding status of e-filer registration **[0.8 eliminated in the exercise of billing judgment]**.

Date: 11/18/2014 0.0 Staff: Benjamin C. Block
Prepare CAVC admission application; review file memorandum **[0.3 hours eliminated in the exercise of billing judgment]**.

Date: 11/19/2014 0.0 Staff: Kevin King
Correspond with B. Block and J. Fowler regarding admission to the bar of the U.S. Court of Veterans Appeals; complete related paperwork **[0.3 hours eliminated in the exercise of billing judgment]**.

Date: 11/21/2014 0.0 Staff: Kevin King
Prepare for conference call with attorney A. Odom regarding case status. Conference call with NVLSP attorney A. Odom and client D. Hill regarding case status and next steps; discuss strategy for appellant's brief with A. Odom; review e-mail from A. Odom regarding same **[1.3 hours eliminated in the exercise of billing judgment]**.

Date: 11/21/2014 1.7 Staff: Amy F. Odom
Conduct legal research regarding cases distinguishing *Justus* (0.2); conference with and legal advice to co-counsel regarding *Justus* and 38 USC § 1153 and issues to raise in brief and draft follow-up email regarding same (1.5).

Date: 11/24/2014 0.0 Staff: Kevin King
Apply for admission to bar of U.S. Court of Appeals for Veterans Claims. Review sample appellant's brief provided by NVLSP attorney A. Odom **[0.5 hours eliminated in the exercise of billing judgment]**; review and prepare notes regarding pages 1-924 of RBA in preparation for drafting brief **[3.3 hours eliminated in the exercise of billing judgment]**.

Date: 11/25/2014 0.0 Staff: Kevin King

Complete, notarize, and transmit forms for admission to Court of Appeals for Veterans Claims (CAVC) bar **[0.6 hours eliminated in the exercise of billing judgment]**; review and analyze pages 925-1201 of RBA in preparation for drafting brief **[1.5 eliminated in the exercise of billing judgment]**; review relevant case law **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 11/30/2014 2.0 Staff: Kevin King

Research case law and relevant statutes regarding (i) presumption of aggravation, (ii) standard of review for new and material evidence, (iii) Justus presumption of credibility, and (iv) other issues pertaining to Mr. Hill's appeal for inclusion in brief.

Date: 12/1/2014 0.1 Staff: Kevin King

Review *Duran v. Brown*, 7 Vet. App. 216 (1994), for inclusion in brief.

Date: 12/4/2014 0.0 Staff: Kevin King

Correspond with attorney B. Block regarding status of appellant brief and roadmap for filing said brief **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 12/8/2014 2.0 Staff: Kevin King

Continue researching case law regarding presumption of aggravation **[0.5 eliminated in the exercise of billing judgment]**; draft fact section of appellant's opening brief (2.0).

Date: 12/9/2014 4.5 Staff: Kevin King

Draft and add to fact section of appellant opening brief, review outline of record and relevant portions of record (3.0); draft and revise Statement of Issues (0.3); prepare outline of argument section of opening brief (1.2); review relevant materials **[0.8 hours eliminated in the exercise of billing judgment]**.

Date: 12/10/2014 7.6 Staff: Kevin King

Revise and add to fact section of appellant brief (3.0); draft and revise Part I of appellant brief re: psychiatric-disability claim (2.0); perform further research regarding (i) the standard of review for Board findings, (ii) a claimant's burden of proof in establishing service connection, (iii) the presumption of aggravation set forth in 38 U.S.C. 1153 and VA regulations; and (iv) the duty to explain set forth in 38 U.S.C. 7104(d) (1.1)**[additional 1.0 eliminated in the exercise of billing judgment]**; draft Part II of appellant brief regarding motion to reopen his previously denied lower-back claim (1.5).

Date: 12/11/2014 8.6 Staff: Kevin King

Cite-check and revise statement of facts and statement of the issues in appellant brief **[2.2 hours eliminated in the exercise of billing judgment]**; add to Part I of argument section (re: psychiatric-disability claim) and perform additional electronic research regarding relevant legal standards (1.7)**[additional 1.0 eliminated in the exercise of billing judgment]**; add to Part II of argument section (re: reopening of lower-back claim) (2.4); perform additional electronic research regarding standard for new and material evidence necessary to reopen final decisions **[0.8 eliminated in the exercise of billing judgment]**; draft and add to summary of argument and conclusion of appellant brief (2.0); review portions of M21-1MR relevant to claim of veteran status, and perform electronic research regarding requirements for "active service"/"veteran status" for claimants injured during active duty for training (ACDUTRA) (2.5); correspond with attorneys B. Block and A. Odom (NVLSP) regarding draft of appellant brief, timeline for filing, and related matters **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 12/11/2014 0.0 Staff: Benjamin C. Block

Email exchanges with K. King regarding draft brief **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 12/12/2014 0.6 Staff: Amy F. Odom

Telephone conference with co-counsel regarding status of appeal and provide legal advice regarding additional arguments to raise in brief.

Date: 12/12/2014 0.0 Staff: Kevin King
Correspond with attorney A. Odom regarding *Smith v. Shinseki*, 24 Vet. App. 47, as it pertains to claim of veteran status and conduct related electronic research **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 12/13/2014 0.0 Staff: Benjamin C. Block
Review draft brief and prepare inserts for same **[2.0 hours eliminated in the exercise of billing judgment]**.

Date: 12/13/2014 0.0 Staff: Kevin King
Review revisions to draft appellant brief proposed by attorney B. Block **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 12/14/2014 2.7 Staff: Kevin King
Legal advice from attorney B. Block regarding revisions to appellant brief, including the elements of a benefits claim (fact-of-increase vs. causation), the role of the presumption of aggravation, and related issues **[1.1 eliminated in the exercise of billing judgment]**; add to argument to incorporate B. Block's suggestions and to further clarify the issues described above (2.7); draft e-mail regarding latest draft brief to NVLSP attorney A. Odom for her review **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 12/14/2014 0.0 Staff: Benjamin C. Block
Continue reviewing brief and preparing inserts for same and provide legal advice to K. King regarding further inserts to be made by him **[2.5 hours eliminated in the exercise of billing judgment]**.

Date: 12/15/2014 0.0 Staff: Benjamin C. Block
Follow-up with K. King regarding appeal brief **[0.3 hours eliminated in the exercise of billing judgment]**.

Date: 12/15/2014 0.5 Staff: Kevin King
Correspond with client D. Hill regarding engagement letter and briefing schedule (0.5); correspond with attorney B. Block and Matter Maintenance

regarding signed engagement letter; meet and correspond with B. Block regarding further revisions to appellant brief, including revised statement of issues and conclusion; revise Part I of draft brief, regarding psychiatric-disability claim, and conduct related case-law research; revise Part II of draft brief, concerning lower-back claim, and conduct related electronic research; correspond with U.S. Court of Appeals for Veterans Claims re: admission status and address update; proofread draft appellant brief **[6.9 hours eliminated in the exercise of billing judgment]**.

Date: 12/16/2014 0.0 Staff: Kevin King

E-mail and telephone correspondence with NVLSP attorney A. Odom regarding revisions to appellant brief, with a particular focus on interaction between veteran status, presumption of aggravation, and fact-of-increase issues in Part I of brief **[1.3 hours eliminated in the exercise of billing judgment]**; e-mail correspondence with attorney B. Block regarding further revisions to appellant brief **[0.7 hours eliminated in the exercise of billing judgment]**; prepare and file notice of appearance in U.S. Court of Appeals for Veterans Claims **[0.2 hours eliminated in the exercise of billing judgment]**; revise brief per suggestions from B. Block and A. Odom **[2.1 hours eliminated in the exercise of billing judgment]**; revise citations to the RBA in brief to comply with CAVC Rule 28(h) **[0.6 hours eliminated in the exercise of billing judgment]**.

Date: 12/16/2014 2.2 Staff: Amy F. Odom

Review draft brief, prepare inserts for same, and provide legal advice to co-counsel regarding additional inserts to make for brief.

Date: 12/16/2014 0.0 Staff: Benjamin C. Block

Edits to draft appeal brief and legal advice to K. King regarding same **[2.5 hours eliminated in the exercise of billing judgment]**.

Date: 12/17/2014 1.3 Staff: Kevin King
Review e-filing rules, of U.S. Court of Appeals for Veterans Claims **[0.6 hours eliminated in the exercise of billing judgment]**; make final revisions to body of brief **[2.3 hours eliminated in the exercise of billing judgment]**; add and verify accuracy of table of authorities, including portion referring to the RBA, per CAVC rules (0.9); file appellant brief using CM/ECF system **[0.2 hours eliminated in the exercise of billing judgment]**; correspondence with attorneys A. Odom and B. Block regarding filing, and with client D. Hill re: same (0.4).

Date: 12/31/2014 0.0 Staff: Kevin King
Review notice of docket activity generated by U.S. Court of Appeals for Veterans Claims **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 1/12/2015 0.0 Staff: Kevin King
Check docket sheet at U.S. Court of Appeals for Veterans Claims to verify timeline for appellee's brief and reply brief **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 2/12/2015 0.0 Staff: Kevin King
Correspond with attorney B. Block regarding status of CAVC appeal **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 2/18/2015 0.0 Staff: Kevin King
Correspondence with attorneys B. Block and A. Odom re: opposing counsel's request for 45-day extension; correspond with opposing counsel re: same; review Clerk's order granting extension and compute/confirm/circulate new briefing deadlines **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 2/18/2015 0.0 Staff: Benjamin C. Block
Emails with K. King regarding Secretary's extension request **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 2/19/2015 0.0 Staff: Kevin King
Review and file notice of appearance on behalf of attorney B. Block, at B. Block request **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 2/23/2015 0.0 Staff: Kevin King
Review filing deadlines, per order issued previously by U.S. Court of Appeals for Veterans Claims **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 3/2/2015 0.4 Staff: Kevin King
Correspond with attorney B. Block and client D. Hill regarding status of appeal to U.S. Court of Appeals for Veterans Claims and new briefing schedule issued by Court; discuss potential issues for reply brief with D. Hill.

Date: 3/2/2015 0.0 Staff: Benjamin C. Block
Call with D. Hill regarding case status; follow-up with K. King **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 3/31/2015 0.0 Staff: Kevin King
Correspondence with attorney B. Block re: timeline for reply brief **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 3/31/2015 0.0 Staff: Benjamin C. Block
Follow-up with K. King regarding briefing schedule **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 4/2/2015 1.4 Staff: Kevin King
Review and prepare notes on government's brief (1.1); correspondence with attorneys B. Block and A. Odom regarding reply brief and possible motion for extension of time regarding same **[0.4 hours eliminated in the exercise of billing judgment]**; draft and transmit letter to client regarding brief and further briefing schedule (0.3).

Date: 4/2/2015 0.0 Staff: Amy F. Odom
Email exchanges with co-counsel regarding status of appeal and Secretary's brief **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 4/2/2015 0.0 Staff: Benjamin C. Block
Review Secretary's brief; emails with K. King and A. Odom regarding same
[1.0 hour eliminated in the exercise of billing judgment].

Date: 4/3/2015 0.2 Staff: Kevin King
Correspondence with opposing counsel regarding call from client **[0.1 eliminated in the exercise of billing judgment]**; call with D. Hill regarding need not to contact opposing counsel directly, regarding status of case and briefing schedule, and arguments to be made in reply brief (0.2)**[additional 0.1 eliminated in the exercise of billing judgment].**

Date: 4/6/2015 0.0 Staff: Kevin King
Correspond with attorneys A. Odom and B. Block regarding (1) calls from client to opposing counsel and (2) schedule for reply brief/motion for extension of time **[0.1 hours eliminated in the exercise of billing judgment].**

Date: 4/7/2015 0.0 Staff: Benjamin C. Block
Follow-up with K. King regarding motion for extension of time to file reply brief
[0.1 hours eliminated in the exercise of billing judgment].

Date: 4/9/2015 0.0 Staff: Amy F. Odom
Draft and finalize motion for extension of time to file reply brief **[0.2 hours eliminated in the exercise of billing judgment].**

Date: 4/9/2015 0.0 Staff: Kevin King
Correspond with co-counsel A. Odom regarding motion to extend deadline for reply brief; review motion **[0.2 hours eliminated in the exercise of billing judgment].**

Date: 4/10/2015 0.0 Staff: Kevin King
Review Clerk's order extending time for reply brief **[0.1 hours eliminated in the exercise of billing judgment].**

Date: 4/14/2015 0.0 Staff: Kevin King
Schedule conference call with attorneys B. Block and A. Odom to discuss content of reply brief **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 4/15/2015 0.0 Staff: Kevin King
Voicemail from client regarding status of appeal and return call (0.1); follow-up re: scheduling of conference call to discuss reply brief **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 4/22/2015 1.1 Staff: Amy F. Odom
Conduct legal research regarding issues to raise in reply brief (0.5); conference with and legal advice to co-counsel regarding issues to raise in reply brief (0.6).

Date: 4/22/2015 0.0 Staff: Benjamin C. Block
Call with K. King and A. Odom regarding reply brief **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 4/22/2015 0.9 Staff: Kevin King
Prepare outline of reply brief, and conduct related review of prior briefs, case law, and record (0.9); conference call with attorneys B. Block and A. Odom re: strategy for and content of reply brief **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 5/18/2015 2.0 Staff: Kevin King
Review opening and Secretary brief (0.4); review outline of reply brief and update same (0.2); draft reply brief to be filed in CAVC (1.4).

Date: 5/19/2015 9.1 Staff: Kevin King
Continue drafting reply brief to be filed in CAVC (3.0) **[additional 2.5 hours eliminated in the exercise of billing judgment]**; review and revise brief, shortening it to comply with CAVC page-limit rules (1.0); conduct further electronic research re: exceptions to *Justus* presumption, standard of review for motions to reopen and to establish service connection (1.1); review record materials cited by Secretary and formulate response to same, including by

identifying other record materials that rebut Secretary's arguments concerning (a) distance Hill was thrown by lightning strike (b) whether Hill struck a tree, and (c) whether Hill's psychiatric disorder increased in severity after the strike (1.0); proofread reply brief (0.4); correspond with attorneys B. Block and A. Odom regarding status of brief and next steps **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 5/20/2015 3.0 Staff: Kevin King
Revise, and add to argument in CAVC reply brief (2.9); correspond with B. Block re: same **[0.1 hours eliminated in the exercise of billing judgment]**; review D.C. Circuit *Prandy-Binett* decision in connection with reply brief (0.1).

Date: 5/20/2015 0.0 Staff: Benjamin C. Block
Review K. King draft reply brief **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 5/21/2015 1.7 Staff: Kevin King
Revise CAVC reply brief, incorporate my own revisions and those offered by attorney B. Block (1.7); correspond with B. Block and A. Odom re: reply brief and next steps **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 5/21/2015 0.0 Staff: Benjamin C. Block
Edits to Reply Brief; emails with K. King regarding same **[2.0 hours eliminated in the exercise of billing judgment]**.

Date: 5/24/2015 1.0 Staff: Amy F. Odom
Review reply brief, prepare inserts for same, and provide legal advice to co-counsel regarding additional argument to raise.

Date: 5/24/2015 0.0 Staff: Benjamin C. Block
Review A. Odom comments on reply brief **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 5/25/2015 0.0 Staff: Kevin King
Revise CAVC reply brief per suggestions from attorneys A. Odom and B. Block and correspond with A. Odom and B. Block re: same **[0.4 hours eliminated in the exercise of billing judgment]**.

Date: 5/25/2015 0.0 Staff: Benjamin C. Block
Follow-up re: reply brief **[1.0 hour eliminated in the exercise of billing judgment]**.

Date: 5/27/2015 0.5 Staff: Amy F. Odom
Review final draft of reply brief and provide legal advice to co-counsel regarding potential bases for motion for oral argument.

Date: 5/27/2015 1.1 Staff: Kevin King
Revise, and finalize CAVC reply brief, and add table of authorities (1.0); correspond with attorneys A. Odom and B. Block to obtain final sign-off and re: next steps **[0.3 hours eliminated in the exercise of billing judgment]**; review CAVC rules to ensure brief complies **[0.2 hours eliminated in the exercise of billing judgment]**; file brief through CM/ECF system **[0.1 hours eliminated in the exercise of billing judgment]**; draft letter to client re: brief and next steps (0.1).

Date: 5/27/2015 0.0 Staff: Benjamin C. Block
Reply brief; emails re: request for oral argument **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 5/28/2015 0.1 Staff: Amy F. Odom
Legal advice to co-counsel regarding contents of motion for oral argument.

Date: 5/28/2015 0.0 Staff: Kevin King
Review rules governing oral argument and correspond with attorneys A. Odom and B. Block regarding same **[0.3 hours eliminated in the exercise of billing judgment]**.

Date: 5/29/2015 1.0 Staff: Kevin King

Draft and revise motion for oral argument.

Date: 6/1/2015 0.0 Staff: Kevin King

Correspond with opposing counsel regarding motion for oral argument **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 6/1/2015 0.0 Staff: Benjamin C. Block

Confer with K. King re: oral argument motion **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 6/2/2015 0.0 Staff: Kevin King

Correspond with opposing counsel re: motion for oral argument; circulate Secretary's opposition to motion and discuss with attorneys B. Block and A. Odom **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 6/3/2015 0.0 Staff: Kevin King

Revise and finalize motion for oral argument and correspond with attorneys B. Block and A. Odom re: sign-off on same **[0.3 hours eliminated in the exercise of billing judgment]**.

Date: 6/3/2015 0.0 Staff: Benjamin C. Block

Edits to motion for oral argument **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 6/4/2015 0.0 Staff: Kevin King

Correspond with attorney A. Odom re: motion for oral argument and proofread and file motion **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 6/4/2015 0.0 Staff: Amy F. Odom

Review motion for oral argument and provide legal advice to co-counsel regarding same **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 6/15/2015 0.0 Staff: Kevin King
Correspond with attorney A. Odom re: filing and review of Record of Proceedings **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 6/18/2015 0.0 Staff: Kevin King
Review Secretary's opposition to motion for oral argument and prepare notes on same, correspond with attorneys A. Odom and B. Block about Secretary's opposition and potential for reply/effect on case, review CAVC rules governing replies and related procedures on motions, file e-mails, opposition, and other case documents **[0.8 hours eliminated in the exercise of billing judgment]**.

Date: 6/18/2015 2.3 Staff: Tivara Grant
Begin reviewing Record of Proceedings for completeness.

Date: 6/18/2015 0.0 Staff: Benjamin C. Block
Review Reply to request for oral argument; confer with K. King and A. Odom **[0.3 hours eliminated in the exercise of billing judgment]**.

Date: 6/19/2015 0.0 Staff: Tivara Grant
Finish reviewing record of proceedings for completeness **[1.5 hours eliminated in the exercise of billing judgment]**.

Date: 7/1/2015 0.1 Staff: Kevin King
Call from client regarding status of CAVC appeal (advised re: motion for oral argument and Court's decision making process).

Date: 7/2/2015 0.0 Staff: Kevin King
Review order assigning case to Judge Greenberg (CAVC) and correspond with attorneys B. Block and A. Odom re: same **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 7/31/2015 0.3 Staff: Amy F. Odom
Review CAVC decision and provide legal advice to co-counsel regarding issues to raise in motion for reconsideration relating to 38USC 1153 and 38 USC 101(24).

Date: 7/31/2015 0.6 Staff: Kevin King

Review CAVC decision and prepare notes re: same, correspond with attorneys A. Odom and B. Block re: decision and next steps, and collect materials for reconsideration petition **[0.8 hours eliminated in the exercise of billing judgment]**; draft and transmit letter to client D. Hill re: same (0.3); call with client D. Hill re: decision and next steps (0.3)

Date: 7/31/2015 3.0 Staff: Benjamin C. Block

Review opinion and research regarding issues to raise in motion for reconsideration.

Date: 8/1/2015 1.5 Staff: Benjamin C. Block

Draft motion for reconsideration.

Date: 8/1/2015 0.0 Staff: Kevin King

Review petition for reconsideration prepared by attorney B. Block and correspond with B. Block and A. Odom re: same **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 8/2/2015 0.0 Staff: Kevin King

Revise and circulate proposed revisions to CAVC reconsideration decision and review pertinent CAVC rules and *Smith v. Shinseki* decision in connection with above **[0.6 hours eliminated in the exercise of billing judgment]**

Date: 8/3/2015 0.0 Staff: Barton F. Stichman

Review of Court decision and motion for reconsideration **[0.3 hours eliminated in the exercise of billing judgment]**.

Date: 8/3/2015 0.3 Staff: Amy F. Odom

Prepare inserts for motion for reconsideration regarding prior award of service connection for knee disability.

Date: 8/3/2015 0.0 Staff: Kevin King
Correspondence with attorneys A. Odom and B. Block re: finalizing and filing of CAVC reconsideration petition **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 8/3/2015 1.0 Staff: Benjamin C. Block
Finalize motion for reconsideration.

Date: 8/31/2015 0.4 Staff: Amy F. Odom
Review memorandum decision on reconsideration and legal advice to co-counsel regarding next steps.

Date: 8/31/2015 0.0 Staff: Barton F. Stichman
Review of Court's decision on reconsideration **[0.4 hours eliminated in the exercise of billing judgment]**.

Date: 8/31/2015 0.4 Staff: Kevin King
Review revised CAVC decision and correspond with A. Odom and B. Block re: strategic decisions concerning same

Date: 8/31/2015 0.0 Staff: Benjamin C. Block
Review decision; emails with K. King and A. Odom regarding same **[0.8 hours eliminated in the exercise of billing judgment]**.

Date: 9/3/2015 0.3 Staff: Amy F. Odom
Review Federal Circuit decision in *Donnellan* and provide legal advice to co-counsel regarding potential next steps.

Date: 9/3/2015 0.6 Staff: Kevin King

Draft, revise, and send letter re: decision on reconsideration to client (0.2); call client and discuss decision on reconsideration and next steps (0.2); correspond with attorneys A. Odom and B. Block re: further appeal of “active service” issue and related matters (0.2); read *Donnellan* decision regarding further appeal to CAFC **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 9/3/2015 0.0 Staff: Benjamin C. Block

Emails with K. King and A. Odom regarding motion for panel consideration **[0.3 hours eliminated in the exercise of billing judgment]**.

Date: 9/8/2015 1.9 Staff: Kevin King

Research re: active duty for training and presumption of aggravation, in connection with petition for panel hearing.

Date: 9/9/2015 3.9 Staff: Kevin King

Research application of presumption of aggravation to periods of active duty for training (ACDUTRA) and review/prepare notes on cases concerning same (*Biggins*, *Paulson*, *Smith*, and others cited in amended decision) (3.6); outline content of petition for panel decision (0.3).

Date: 9/10/2015 2.4 Staff: Kevin King

Research application of statutory presumptions to periods of active duty for training **[2.8 hours eliminated in the exercise of billing judgment]**; call with attorney A. Odom re: strategy for motion for panel decision **[0.5 hours eliminated in the exercise of billing judgment]**; revise and extend motion for panel decision (2.4)

Date: 9/10/2015 0.5 Staff: Amy F. Odom

Review CAVC decision in *Biggins* and conference with and legal advice to co-counsel regarding issues to raise in motion for panel.

Date: 9/11/2015 3.0 Staff: Kevin King

Further research in support of motion for panel decision **[1.7 hours eliminated in the exercise of billing judgment]**; revise, and add to argument in motion (3.0); review motion for compliance with Vet. R. App. P. 35(b) and (e) **[0.2 hours eliminated in the exercise of billing judgment]**; correspondence with B. Block re: motion to amend **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 9/11/2015 0.0 Staff: Benjamin C. Block

Review/edit motion for panel rehearing **[2.5 hours eliminated in the exercise of billing judgment]**.

Date: 9/12/2015 0.0 Staff: Kevin King

Correspondence with attorney B. Block re: amended motion for panel decision; review B. Block edits to same **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 9/13/2015 0.0 Staff: Kevin King

Revise motion for panel decision per correspondence with B. Block and correspond with B. Block re: same **[1.0 hour eliminated in the exercise of billing judgment]**.

Date: 9/13/2015 0.0 Staff: Benjamin C. Block

Edits to motion for panel rehearing **[2.0 hours eliminated in the exercise of billing judgment]**.

Date: 9/14/2015 0.0 Staff: Kevin King

Revise motion for panel decision, per B. Block and additional research, and correspond with B. Block re: same **[3.3 hours eliminated in the exercise of billing judgment]**.

Date: 9/15/2015 0.0 Staff: Kevin King

Revise motion for panel decision per comments from B. Block, circulate to A. Odom, and correspondence with A. Odom and B. Block re: same **[1.3 hours eliminated in the exercise of billing judgment]**.

Date: 9/16/2015 0.0 Staff: Benjamin C. Block
Edits to K. King revisions to motion for panel hearing **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 9/18/2015 0.7 Staff: Kevin King
Calls and correspondence with attorneys A. Odom and B. Block re: revisions to motion for panel decision and strategy for same **[0.7 hours eliminated in the exercise of billing judgment]**; research prior version of M21-1MR per A. Odom and report re: same (0.4); research *Chevron* deference/statutory interpretation precedent per A. Odom (0.3); revise motion for panel decision per suggestions from Odom and Block and circulate new draft **[2.4 hours eliminated in the exercise of billing judgment]**.

Date: 9/18/2015 1.4 Staff: Amy F. Odom
Review draft motion for panel, prepare inserts, and provide legal advice to co-counsel regarding argument.

Date: 9/18/2015 0.0 Staff: Benjamin C. Block
Review A. Odom comments on motion for panel rehearing; confer with K. King. **[0.5 hours eliminated in the exercise of billing judgment]**; Edits to motion for panel rehearing. **[1.0 hours eliminated in the exercise of billing judgment]**.

Date: 9/19/2015 0.0 Staff: Kevin King
E-mail correspondence with attorney B. Block re: revisions to motion for panel decision **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 9/19/2015 0.0 Staff: Benjamin C. Block
Review/edit motion for panel rehearing **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 9/20/2015 0.0 Staff: Benjamin C. Block
Emails with K. King re: filing of motion for panel rehearing **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 9/20/2015 0.0 Staff: Kevin King
Review new version of motion for panel decision prepared by B. Block; correspond with B. Block re: same; circulate final draft to A. Odom for approval **[0.4 hours eliminated in the exercise of billing judgment]**.

Date: 9/21/2015 0.3 Staff: Kevin King
File motion for panel decision **[0.1 hours eliminated in the exercise of billing judgment]**; draft, and finalize letter to client re: same, along with copy of motion (0.3)

Date: 10/30/2015 0.0 Staff: Amy F. Odom
Review CAVC memorandum decision **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 10/30/2015 0.0 Staff: Kevin King
Review newly issued CAVC decision; correspond with B. Block and A. Odom re: same and next steps for further appeal **[0.7 hours eliminated in the exercise of billing judgment]**.

Date: 10/30/2015 1.0 Staff: Benjamin C. Block
Review decision on reconsideration; review *Smith* case; emails with K. King and A. Odom.

Date: 11/1/2015 0.0 Staff: Kevin King
Correspond with A. Odom and B. Block re: next steps on CAVC appeal **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 11/2/2015 1.0 Staff: Kevin King
Call with A. Odom and B. Block re: next steps in CAVC appeal; review CAVC rules to determine procedural options; begin drafting renewed motion for panel decision.

Date: 11/2/2015 0.5 Staff: Amy F. Odom
Conference with and legal advice to co-counsel regarding issues to raise in second panel motion.

Date: 11/2/2015 0.0 Staff: Benjamin C. Block
Review briefs and *Smith* case and participate in call re: whether to seek reconsideration/panel rehearing **[1.5 hours eliminated in the exercise of billing judgment]**.

Date: 11/4/2015 0.4 Staff: Kevin King
Draft and send letter to client 10/30 CAVC decision and call client regarding same.

Date: 11/5/2015 2.8 Staff: Kevin King
Correspond with A. Odom and B. Block re: renewed motion for panel decision; circulate redline comparing prior CAVC opinion with 10/30 version; research, draft, and revise renewed motion.

Date: 11/5/2015 0.0 Staff: Benjamin C. Block
Review redline of Judge Greenberg's opinions **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 11/6/2015 2.3 Staff: Kevin King
Correspond with A. Odom re: VA interpretation of presumptions of soundness and aggravation; research, draft, and circulate renewed motion for panel decision; discuss revisions to draft motion with B. Block, incorporate same, and send draft to A. Odom for review and inserts.

Date: 11/6/2015 0.0 Staff: Benjamin C. Block
Edits to draft motion for reconsideration; confer with K. King **[1.0 hour eliminated in the exercise of billing judgment]**.

Date: 11/9/2015 0.1 Staff: Kevin King
Call from R. Baird (VA Counsel) re: motion for panel decision; relay details of call to A. Odom.

Date: 11/13/2015 0.0 Staff: Kevin King
Correspond with NVLSP co-counsel A. Odom re: status of revisions to brief and check Vet. R. App. P. re: timeline for motion **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 11/15/2015 0.0 Staff: Benjamin C. Block
Review L. Rev. article on CAVC single-judge decisions **[0.3 hours eliminated in the exercise of billing judgment]**.

Date: 11/16/2015 0.0 Staff: Kevin King
Review B. Stichman article re: CAVC decisional process and correspond with B. Block re: same; correspondence with VA attorney R. Baird re: renewed motion for panel decision **[0.4 hours eliminated in the exercise of billing judgment]**.

Date: 11/16/2015 0.0 Staff: Benjamin C. Block
Review/edit motion for reconsideration **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 11/18/2015 0.6 Staff: Amy F. Odom
Review motion for panel review and prepare inserts for same.

Date: 11/18/2015 0.2 Staff: Kevin King
Review draft of renewed motion for panel decision circulated by co-counsel A. Odom and incorporate changes from same, shorten motion to conform to CAVC page limit rules, correspond with A. Odom and B. Block re: final revisions to motion, file renewed motion for panel decision **[0.9 hours eliminated in the exercise of billing judgment]**; letter to client re: new motion (0.2)

Date: 1/13/2016 0.0 Staff: Amy F. Odom
Review Court's Order regarding panel and email exchange with co-counsel regarding same **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 1/13/2016 0.0 Staff: Kevin King
Review Order referring appeal to panel and correspondence with B. Block/A. Odom re: same **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 1/13/2016 0.0 Staff: Benjamin C. Block
Review Clerk's order re: panel assignment **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 3/29/2016 0.0 Staff: Amy F. Odom
Review CAVC Order regarding supplemental briefing and email exchanges with co-counsel regarding same **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 3/29/2016 0.0 Staff: Benjamin C. Block
Review Order re: supplemental briefing and correspondence with K. King/A. Odom re: same **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 3/29/2016 0.3 Staff: Kevin King
Review CAVC briefing and oral argument Order; correspondence with A. Odom and B. Block re: response to and strategy for same.

Date: 4/1/2016 0.2 Staff: Amy F. Odom
Legal advice to P. Berkshire regarding status of appeal and issues to raise in supplemental briefing and oral argument in my absence on maternity leave.

Date: 4/1/2016 0.0 Staff: Kevin King
Correspondence with new NVLSP co-counsel P. Berkshire re: next steps on briefing/oral argument **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 4/1/2016 0.0 Staff: Patrick Berkshire
Draft notice of appearance **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 4/4/2016 0.4 Staff: Kevin King
Review CAVC order re: supplemental briefing and prepare outline of response strategy for same; correspondence with P. Berkshire and B. Block re: same.

Date: 4/4/2016 0.0 Staff: Benjamin C. Block
Call with K. King re: supplemental submission **[0.3 hours eliminated in the exercise of billing judgment]**.

Date: 4/5/2016 0.1 Staff: Kevin King
Correspondence with opposing counsel R. Baird re: CAVC briefing order.

Date: 4/6/2016 0.2 Staff: Kevin King
Review CAVC order setting argument date and format; correspondence with NVLSP and B. Block re: same **[0.2 hours eliminated in the exercise of billing judgment]**. Letter to D. Hill re: briefing and argument order (0.2).

Date: 4/6/2016 0.0 Staff: Benjamin C. Block
Review oral argument Order **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 4/7/2016 0.0 Staff: Benjamin C. Block
Conference with K. King regarding outcome of call with VA attorney **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 4/9/2016 0.1 Staff: Kevin King
Review voicemail from client re: medical diagnosis from VA and relevance to pending appeal.

Date: 4/11/2016 2.5 Staff: Kevin King

Begin researching and drafting supplemental memorandum of law, as directed by CAVC 3/29/16 order.

Date: 4/12/2016 4.5 Staff: Kevin King

Continue to research, draft, and revise supplemental brief in response to CAVC 3/29 Order (3.0). Further research, drafting, and revision of supplemental memorandum of law in response to CAVC 3/29 order (1.5).

Date: 4/13/2016 3.0 Staff: Kevin King

Research, draft, and revise supplemental memorandum of law in response to CAVC 3/29 Order (3.0) **[additional 2.1 hours eliminated in the exercise of billing judgment]**.

Date: 4/14/2016 0.1 Staff: Kevin King

Call to D. Hill re: status of CAVC proceedings and recent VA diagnosis (left message) (0.1). Review new draft of supplemental memorandum of law, as revised by B. Block, and prepare additional revisions to same. Correspondence with B. Block re: revisions and next steps **[0.9 hours eliminated in the exercise of billing judgment]**.

Date: 4/14/2016 0.0 Staff: Benjamin C. Block

Edits to supplemental brief; confer with K. King re: same **[2.0 hours eliminated in the exercise of billing judgment]**.

Date: 4/17/2016 0.0 Staff: Kevin King

Correspondence from P. Berkshire re: supplemental memorandum of law in response to CAVC 3/29 order **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 4/18/2016 1.0 Staff: Patrick Berkshire

Review response to Court Order and provide advice to co-counsel regarding additional inserts to be made.

Date: 4/18/2016 0.0 Staff: Kevin King
Correspondence from/with B. Block re: revisions to Hill supplemental memorandum of law. Review B. Block revisions to supplemental memorandum, discuss same with B. Block, and propose further revisions per P. Berkshire e-mail. Revise and shorten memorandum and send updated version to B. Block. **[0.8 hours eliminated in the exercise of billing judgment]**.

Date: 4/18/2016 0.0 Staff: Benjamin C. Block
Edits to brief to address P. Berkshire's comments **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 4/19/2016 0.0 Staff: Kevin King
Revise supplemental memorandum of law and follow-up correspondence with B. Block re: same. Review revised brief from B. Block and correspondence re: finalizing/filing same. **[1.2 hours eliminated in the exercise of billing judgment]**.

Date: 4/19/2016 0.0 Staff: Benjamin C. Block
Emails and calls with K. King re: edits to brief **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 4/27/2016 0.0 Staff: Kevin King
Review CAVC rules governing supplemental memorandum of law to be filed 4/28 **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 4/28/2016 0.5 Staff: Kevin King
Correspondence with B. Block and P. Berkshire re: finalization and filing of supplemental memorandum of law. Final review of supplemental memorandum of law; file memorandum with CAVC. Draft and send letter to client D. Hill re: memorandum and next steps. Review Secretary's supplemental memorandum of law, prepare notes re: same, and discuss with

B. Block. (0.5) **[additional 0.6 hours eliminated in the exercise of billing judgment]**.

Date: 4/28/2016 0.0 Staff: Benjamin C. Block
Review Sec'y brief; emails with K. King regarding same **[0.5 hours eliminated in the exercise of billing judgment]**.

Date: 5/16/2016 0.0 Staff: Kevin King
Correspondence with client's local attorney and B. Block re: CAVC appeal. **[0.1 eliminated in the exercise of billing judgment]**

Date: 7/6/2016 0.0 Staff: Kevin King
Correspondence with C. Curlet re: CAVC matters **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 7/11/2016 0.0 Staff: Kevin King
Correspondence with B. Block, I. Price et al. re: moot argument; set up room for same **[0.4 hours eliminated in the exercise of billing judgment]**.

Date: 7/13/2016 0.0 Staff: Kevin King
Correspondence with C. Curlet re: CAVC matters **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 7/18/2016 0.0 Staff: Amy F. Odom
Email exchange with co-counsel regarding scheduling moot **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 7/18/2016 1.0 Staff: Kevin King
Prepare for oral argument and organize case filings ; schedule moot and correspondence with moot judges regarding same. **[Additional 0.4 eliminated in the exercise of billing judgment]**

Date: 7/18/2016 0.0 Staff: Benjamin C. Block
Email exchanges re: moot court **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 7/20/2016 0.0 Staff: Kevin King
Correspondence re: scheduling moot **[0.3 hours eliminated in the exercise of billing judgment]**.

Date: 7/21/2016 0.0 Staff: Kevin King
Correspondence with M. Mosier, J. Egozi re: moot **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 7/22/2016 0.0 Staff: Kevin King
Correspondence with D. Insdorf, Reception WA, P. Berkshire, J. Egozi, re: moot **[0.3 hours eliminated in the exercise of billing judgment]**.

Date: 7/24/2016 2.9 Staff: Kevin King
Review briefs, decisions, and orders in preparation for 7/28 oral argument & 7/26 moot.

Date: 7/25/2016 3.6 Staff: Kevin King
Review *Ramsey* oral argument, check on new cases citing *Biggins*, *Donellan*, *Smith*, *Paulson*, etc.; review Record vols. 1 & 2 and prepare notes re: same.
Correspondence with NVLSP attorneys re: moot.

Date: 7/25/2016 1.7 Staff: Mark Mosier
Prepare for Moot Court (1.7) **[additional 1.7 hours eliminated in the exercise of billing judgment]**.

Date: 7/26/2016 1.9 Staff: Amy F. Odom
Participate in moot court (1.7); draft email to VAGC attorney regarding *Best*, *Mahl*, *Quirin*, and 38 USC 5110 (0.2).

Date: 7/26/2016 6.8 Staff: Kevin King
Oral argument preparation, prepare outline of oral argument points (3.0); review record in preparation for oral argument (1.8), moot argument with M.

Mosier, A. Odom, C. Curlet, P. Berkshire (1.8); follow-up correspondence re: same (0.2).

Date: 7/26/2016 3.5 Staff: Patrick Berkshire
Prepare for mootng (2.0); Participate in Moot Court (1.5).

Date: 7/26/2016 1.5 Staff: Mark Mosier
Prepare for, and participate in moot court (1.5) **[additional 3.3 hours eliminated in the exercise of billing judgment]**.

Date: 7/26/2016 0.0 Staff: Patrick Berkshire
Travel to DC from home office in GA to participate in oral argument as second chair **[5.0 hours eliminated in the exercise of billing judgment]**.

Date: 7/26/2016 0.0 Staff: Catherine H. Curlet
Participate in oral argument preparation; review briefs relevant to the same. **[2.6 eliminated in the exercise of billing judgment]**

Date: 7/27/2016 7.7 Staff: Kevin King
Review cases (3.0) & record (1.7) material in preparation for oral argument; draft and revise outline of argument (3.0); calls and correspondence with A. Odom, P. Berkshire, C. Curlet, B. Block re: same **[0.6 hours eliminated in the exercise of billing judgment]**.

Date: 7/27/2016 0.0 Staff: Benjamin C. Block
Confer w/K. King re: oral argument **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 7/28/2016 3.0 Staff: Patrick Berkshire
Prepare for oral argument (2.0); Participate in oral argument as second chair (1.0).

Date: 7/28/2016 8.3 Staff: Kevin King
Final preparations for oral argument in CAVC; meet with B. Block, P. Berkshire et al for pre-argument discussion and briefing at CAVC; present oral argument in CAVC & post-argument debrief with B. Block et al.; correspondence with M. Mosier et al. re: moot and other follow-up items.

Date: 7/28/2016 0.0 Staff: Benjamin C. Block
Oral argument and de-brief **[3.5 hours eliminated in the exercise of billing judgment]**.

Date: 7/29/2016 0.0 Staff: Amy F. Odom
Listen to oral argument recording **[1.0 hours eliminated in the exercise of billing judgment]**.

Date: 7/29/2016 0.0 Staff: Patrick Berkshire
Travel from DC to home office in GA **[3.0 hours eliminated in the exercise of billing judgment]**.

Date: 7/29/2016 0.0 Staff: Kevin King
Review oral argument recording; draft and send letter to client concerning oral argument; e-mails from client re: same (0.1) **[1.0 hours eliminated in the exercise of billing judgment]**.

Date: 8/1/2016 0.0 Staff: Kevin King
Correspondence re: Hill appeal **[0.2 hours eliminated in the exercise of billing judgment]**.

Date: 8/2/2016 0.0 Staff: Kevin King
Correspondence with M. Mosier re: Hill appeal **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 10/3/2016 0.0 Staff: Kevin King
Check CAVC docket re: status of decision **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 10/7/2016 1.0 Staff: Kevin King
Review CAVC decision in Hill appeal (0.9), correspondence with B. Block re: next steps in appeal (0.1).

Date: 10/10/2016 0.0 Staff: Kevin King
Correspondence with O. Walker re: review and comparison of two opinions (original and "revised") issued in Hill appeal by CAVC **[0.1 hours eliminated in the exercise of billing judgment]**.

Date: 10/11/2016 0.0 Staff: Amy F. Odom
Review and analyze CAVC decision **[0.3 hours eliminated in the exercise of billing judgment]**.

Date: 10/13/2016 0.4 Staff: Amy F. Odom
Conference with and legal advice to co-counsel regarding next steps.

Date: 12/22/2016 1.3 Staff: Brendan Ryan
Begin drafting application for reasonable attorneys' fees and expenses under the Equal Access to Justice Act (EAJA), including recitation of procedural history. **[additional 2.0 eliminated in the exercise of billing judgment]**

Date: 12/27/2016 1.6 Staff: Brendan Ryan
Continue drafting EAJA application. **[3.1 eliminated in the exercise of billing judgment]**. Begin drafting itemized billing for EAJA and merging co-counsel hours. (1.6)

Date: 1/4/2017 2.6 Staff: Brendan Ryan
Finished drafting EAJA application **[1.0 hour eliminated in the exercise of billing judgment]** and finished drafting itemized billing statement. (2.6)

Date: 1/20/2017 4.0 Staff: Amy F. Odom

Review itemized list, prepare inserts for same, and exercise significant billing judgment relating to entries spanning from filing of appeal to filing of third motion for panel (3.0); review itemized list, prepare inserts for same, and exercise significant billing judgment relating to entries spanning from supplemental briefing to drafting EAJA (1.0).

Date: 1/22/2017 1.6 Staff: Amy F. Odom

Review application for attorneys' fees and prepare inserts for same, including addition of pertinent procedural history.

Date: 1/24/2017 0.0 Staff: Christine Cote Hill

Review application for attorneys' fees and eliminate more hours than recommended in the exercise of billing judgment. **[1.2 eliminated in the exercise of billing judgment]**.

Date: 1/24/2017 0.6 Staff: Amy F. Odom

Draft and finalize letter to client regarding impact of CAVC decision and next steps, with attachments.

Date: 1/26/2017 0.0 Staff: Amy F. Odom

Finalize EAJA application **[1.0 hour eliminated in the exercise of billing judgment]**.

CERTIFICATION

As lead counsel in this appeal, I have reviewed the combined billing statement above and I am satisfied that it accurately reflects the work performed by all counsel and others entitled to be included above and I have considered and eliminated all time that I believe could be considered excessive or redundant.

Date: January 26, 2017

/s/ Kevin King
Kevin King

EXHIBIT B

Databases, Tables & Calculators by Subject

SHARE ON: FONT SIZE:

Change Output Options: From: To:

include graphs include annual averages

[More Formatting Options](#)

Data extracted on: December 15, 2016 (12:25:03 PM)

Consumer Price Index - All Urban Consumers

Series Id: CUURA311SA0, CUUSA311SA0
 Not Seasonally Adjusted
Area: Washington-Baltimore, DC-MD-VA-WV
Item: All items
Base Period: NOVEMBER 1996=100

Download: [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1996													100.0		
1997	100.4		100.8		100.5		101.1		101.4		100.5		100.8	100.6	101.0
1998	101.0		101.6		101.5		102.8		102.9		102.4		102.1	101.5	102.7
1999	102.8		103.2		103.6		104.6		105.4		105.0		104.2	103.4	105.1
2000	105.4		107.1		106.7		108.4		108.7		108.5		107.6	106.6	108.6
2001	108.9		109.7		110.1		110.8		111.7		110.9		110.4	109.7	111.1
2002	110.9		111.9		112.8		113.4		114.0		114.0		113.0	112.1	113.9
2003	114.6		115.9		115.7		116.8		117.2		116.7		116.2	115.6	116.9
2004	117.1		118.1		118.9		120.2		120.8		120.9		119.5	118.3	120.7
2005	121.3		122.7		123.6		125.0		126.7		125.4		124.3	122.8	125.8
2006	126.3		126.8		128.8		130.7		130.2		129.3		128.8	127.7	130.0
2007	129.956		131.945		132.982		134.442		134.678		135.151		133.464	132.000	134.927
2008	136.293		138.090		139.649		142.065		142.036		138.547		139.499	138.490	140.509
2009	137.598		138.620		139.311		140.810		140.945		140.718		139.814	138.777	140.850
2010	141.124		141.741		142.025		141.966		142.738		142.915		142.218	141.700	142.736
2011	144.327		146.044		147.554		147.747		147.658		147.565		146.975	146.259	147.691
2012	148.163		150.074		150.155		149.838		151.732		150.646		150.212	149.603	150.822
2013	150.845		152.188		151.908		152.657		153.532		153.160		152.500	151.798	153.203
2014	153.700		154.600		155.198		155.220		155.522		154.926		154.847	154.626	155.069
2015	153.376		154.984		155.880		155.546		156.278		155.820		155.353	154.886	155.820
2016	155.519		156.493		157.770		157.674		157.572		157.706			156.770	

TOOLS

- Areas at a Glance
- Industries at a Glance
- Economic Releases
- Databases & Tables
- Maps

CALCULATORS

- Inflation
- Location Quotient
- Injury And Illness

HELP

- Help & Tutorials
- FAQs
- Glossary
- About BLS
- Contact Us

INFO

- What's New
- Careers @ BLS
- Find It! DOL
- Join our Mailing Lists
- Linking & Copyright Info

RESOURCES

- Inspector General (OIG)
- Budget and Performance
- No Fear Act
- USA.gov
- Benefits.gov
- Disability.gov

EXHIBIT C

LAFFEY MATRIX -- 2003-2014
(2009-10 rates were unchanged from 2008-09 rates)

Experience	Years (Rate for June 1 - May 31, based on prior year's CPI-U)										
	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14
20+ years	380	390	405	425	440	465	465	475	495	505	510
11-19 years	335	345	360	375	390	410	410	420	435	445	450
8-10 years	270	280	290	305	315	330	330	335	350	355	360
4-7 years	220	225	235	245	255	270	270	275	285	290	295
1-3 years	180	185	195	205	215	225	225	230	240	245	250
Paralegals & Law Clerks	105	110	115	120	125	130	130	135	140	145	145

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. The matrix is intended to be used 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 does **not** apply in cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. This matrix is based on the hourly rates allowed by the District Court 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). It is commonly referred to by attorneys and federal judges in the District of Columbia as the "Laffey Matrix" or the "United States Attorney's Office Matrix." The column headed "Experience" refers to the years following the attorney's graduation from law school. The various "brackets" are intended to correspond to "junior associates" (1-3 years after law school graduation), "senior associates" (4-7 years), "experienced federal court litigators" (8-10 and 11-19 years), and "very experienced federal court litigators" (20 years or more). *See Laffey*, 572 F. Supp. at 371.
3. The hourly rates approved by the District Court in *Laffey* were for work done principally in 1981-82. The Matrix begins with those rates. *See Laffey*, 572 F. Supp. at 371 (attorney rates) & 386 n.74 (paralegal and law clerk rate). The rates for subsequent yearly periods were determined by adding the change in the cost of living for the Washington, D.C. area to the applicable rate for the prior year, and then rounding to the nearest multiple of \$5 (up if within \$3 of the next multiple of \$5). The result is subject to adjustment if appropriate to ensure that the relationship between the highest rate and the lower rates remains reasonably constant. Changes in the cost of living are measured by the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.
4. 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 United States Attorney's Office 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). Lower federal courts in the District of Columbia have used this updated *Laffey* Matrix when determining whether fee awards under fee-shifting statutes are reasonable. *See, e.g.*, *Blackman v. District of Columbia*, 59 F. Supp. 2d 37, 43 (D.D.C. 1999); *Jefferson v. Milvets System Technology, Inc.*, 986 F. Supp. 6, 11 (D.D.C. 1997); *Ralph Hoar & Associates v. Nat'l Highway Transportation Safety Admin.*, 985 F. Supp. 1, 9-10 n.3 (D.D.C. 1997); *Martini v. Fed. Nat'l Mtg Ass'n*, 977 F. Supp. 482, 485 n.2 (D.D.C. 1997); *Park v. Howard University*, 881 F. Supp. 653, 654 (D.D.C. 1995).

USAO ATTORNEY'S FEES MATRIX – 2015 – 2017*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
31+ years	568	581
21-30 years	530	543
16-20 years	504	516
11-15 years	455	465
8-10 years	386	395
6-7 years	332	339
4-5 years	325	332
2-3 years	315	322
Less than 2 years	284	291
Paralegals & Law Clerks	154	157

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. 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. Holzmann*, 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., Joaquin v. Friendship Pub. Charter Sch.*, --- F. Supp. 3d ---, 2016 WL 3034151 (D.D.C. 2016); *Prunty v. Vivendi*, --- F. Supp. 3d ---, 2016 WL 3659889 (D.D.C. 2016); *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 Pub. Charter Sch.*, 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.