

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

HEZEKIAH GREEN, JR.)	
Appellant,)	
)	
v.)	CAVC No. 16-740
)	EAJA
)	
DAVID J. SHULKIN, M.D.,)	
SECRETARY OF)	
VETERANS AFFAIRS,)	
Appellee)	

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

Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d) (1994), and the Court's Rule 39, Appellant, through counsel, seeks a total fee in the amount of **\$22,326.59**.

The basis for the application is as follows:

Grounds for an Award

This Court has identified four elements as being necessary to warrant an award by the Court of attorneys' fees and expenses to an eligible party pursuant to the EAJA. These are: (1) a showing that the appellant is a prevailing party; (2) a showing that the appellant is eligible for an award; (3) an allegation that the government's position is not substantially justified; and (4) an itemized statement of

the fees sought. *Owens v. Brown*, 10 Vet. App. 65, 66 (1997) (*quoting Bazalo*, 9 Vet. App. at 308). *See also* 28 U.S.C. §§ 2412(d)(1)(A),(B).

As will be demonstrated below, Appellant satisfies each of the above-enumerated requirements for EAJA.

1. THE APPELLANT SATISFIES EACH OF THE REQUIREMENTS FOR AN AWARD OF ATTORNEY'S FEES AND EXPENSES

A. *The Appellant Is a Prevailing Party*

In *Buckhannon Bd. and Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598, 121 S.Ct 1835 (2001) (hereafter "*Buckhannon*"), the Supreme Court explained that in order to be a prevailing party the applicant must receive "at least some relief on the merits" and the relief must materially alter the legal relationship of the parties. 532 U.S. at 603-605. The Federal Circuit adopted the *Buckhannon* test in *Brickwood Contractors, Inc. v. United States*, 288 F.3d 1371 (Fed. Cir. 2002) and applied it to an EAJA applicant. The Federal Circuit explained in *Rice Services, LTD. v. United States*, that "in order to demonstrate that it is a prevailing party, an EAJA applicant must show that it obtained an enforceable judgment on the merits or a court ordered consent decree that materially altered the legal relationship between the parties, or the equivalent of either of those." 405 F.3d 1017, 1025 (Fed. Cir. 2005).

In *Zuberi v. Nicholson*, 19 Vet. App. 541 (2006), this Court explained that the Federal Circuit case of *Akers v. Nicholson*, 409 F.3d 1356 (Fed. Cir. 2005) "did not change the focus for determining prevailing party status from a standard that looks to the basis for the remand to one that looks to the outcome of the remand. *Akers* simply did not involve a remand that was predicated on an administrative error." 19 Vet. App. at 547. (internal quotations omitted). The Court held in *Zuberi* that *Motorola* provided the proper test for prevailing party. *Id.* Next in *Kelly v. Nicholson*, 463 F.3d 1349 (Fed. Cir. 2006), the Federal Circuit held that:

To be considered a prevailing party entitled to fees under EAJA, one must secure some relief on the merits. Securing a remand to an agency can constitute the requisite success on the merits. [W]here the plaintiff secures a remand requiring further agency proceedings because of alleged error by the agency, the plaintiff qualifies as a prevailing party ... without regard to the outcome of the agency proceedings where there has been no retention of jurisdiction by the court.

Id. at 1353 (internal citations and quotations omitted).

The Appellant in the instant matter is a prevailing party. In this case, the parties agreed to a joint motion for remand based upon the Board's failure to provide an adequate statement of reasons or bases. See pages 1-5 of the JMR. The mandate was issued on May 15, 2017. Based upon the foregoing, Mr. Green is a prevailing party.

B. Appellant Is Eligible For An EAJA Award

Appellant also satisfies the EAJA requirement that his net worth at the time his appeal was filed did not exceed \$2,000,000. 28 U.S.C. § 2412(d)(2)(B). Mr. Green had a net worth under \$2,000,000 on the date this action was commenced. See Paragraph 3 of the fee agreement filed with the Court. Therefore, Mr. Green is a person eligible to receive an award under the EAJA.

C. The Position of the Secretary Was Not Substantially Justified

In *White v. Nicholson*, 412 F.3d 1314 (Fed. Cir. 2004) the Federal Circuit applied the totality of the circumstances test and noted that "EAJA requires that the record must supply the evidence of the Government's substantial justification." 412 F.3d at 1316. The Secretary's position during proceedings before the Agency and in Court was not reasonable, either in law or in fact, and accordingly the Secretary's position was not substantially justified at either the administrative or litigation stage in this case. There thus is nothing substantially justified in the Board's failure to provide an adequate statement of reasons or bases. Moreover, there is no evidence that special circumstances exist in Appellant's case that would make an award of reasonable fees and expenses unjust. 28 U.S.C. § 2412(d)(1)(A).

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

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

Seven attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Christian McTarnaghan, Jenna Zellmer, Angela Bunnell, Barbara Cook, Megan Ellis, Danielle M. Gorini, and Zachary Stolz.¹ Attorney Christian McTarnaghan graduated from Suffolk University Law School in 2014 and

¹"There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the same work and are being compensated for the distinct contribution of each lawyer." *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1301 (11th Cir. 1988); *see also Baldridge v. Nicholson*, 19 Vet.App. 227, 237-38 (2005) ("the fees sought must be 'based on the distinct contribution of each individual counsel.'"). "The use in involved litigation of a team of attorneys who divide up the work is common today for both plaintiff and defense work." *Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) *holding modified by Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). "Careful preparation often requires collaboration and rehearsal[.]" *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998). As demonstrated in Exhibit A, each attorney involved in the present case provided a distinct, and non-duplicative contribution to the success of the appeal. *See Baldridge*, 19 Vet.App. at 237 ("An application for fees under EAJA where multiple attorneys are involved must also explain the role of each lawyer in the litigation and the tasks assigned to each, thereby describing the distinct contribution of each counsel.").

the *Laffey* Matrix establishes that \$322.00 is the prevailing market rate for an attorney with his experience.² Jenna Zellmer graduated from Boston University Law School in 2013 and the *Laffey* Matrix establishes that \$322.00 is the prevailing market rate for an attorney with her experience. Angela Bunnell graduated from Northeastern University Law School in 2014 and the *Laffey* Matrix establishes that \$322.00 is the prevailing market rate for an attorney with her experience. Barbara Cook graduated from University of Michigan Law School in 1977 and the *Laffey* Matrix establishes that \$581.00 is the prevailing market rate for an attorney with her experience. Megan Ellis graduated from Boston College Law School in 2014 and the *Laffey* Matrix establishes that \$322.00 is the prevailing market rate for an attorney with her experience. Danielle Gorini graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$465.00 is the

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

prevailing market rate for an attorney with her experience. Zachary Stolz graduated from the University of Kansas School of Law in 2005 and the *Laffey* Matrix establishes that \$465.00 is the prevailing market rate for an attorney with his experience.

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

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$198.69 per hour for Mr. McTarnaghan, Ms. Zellmer, Ms. Bunnell, Ms. Ellis, Ms. Gorini, and Mr. Stolz for representation services before the Court.³ This rate per hour, multiplied by the number of hours billed for these six attorneys (100.30) results in a total attorney's fee amount of \$19,928.69.

Appellant seeks attorney's fees at the rate of \$189.16 per hour for Ms. Cook's

³This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. See *Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to February 2017 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181.

representation services before the Court.⁴ This rate per hour, multiplied by the number of hours billed for Ms. Cook (5.70) results in a total attorney's fee amount of \$1,078.20.

In addition, Appellant seeks attorney's fees at the rate of \$167.58 per hour for representation services before the Court for Mr. Overby's time.⁵ This rate per hour, multiplied by the number of hours billed (1.60) results in a total attorney's fee amount of \$268.13.

In addition, Mr. Green seeks reimbursement for the following expenses:

Hotel in DC for oral argument – JZ: \$228.25

⁴ This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Cincinnati. *See Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to February 2017 the chosen mid-point date for the litigation in this case, using the method described in *Elcyszyn v. Brown*, 7 Vet. App. 170, 181.

⁵ The hourly billing rate at which fees are claimed for those hours expended is based on the rate of \$120.00 per hour plus the cost-of-living allowance ("COLA"), which is adjusted according to the formula described in *Apodackis v. Nicholson*, 19 Vet. App. 91, 95-96 (2005). *McDonald v. Nicholson*, 21 Vet. App. 257, 262-63 (2007); *see Elcyszyn v. Brown*, 7 Vet. App. 170, 181 (1994) ("[T]he Court will permit-and encourage-the selection of a single mid-point date, such as the date upon which an appellant's principal brief...is filed with the Court, as the base for calculating a cost of living increase."). This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. The mid-point date in this litigation is February 2017, the period of time during which the opening brief was filed with the Court.

Hotel in DC for oral argument – ZMS: \$228.25

Airfare to DC from Providence – ZMS: \$250.20

Airfare to DC from Boston – JZ: \$289.16

Travel while in DC – ZMS: \$19.71

Parking at the airport – ZMS: \$36.00

Based upon the foregoing, the total fee sought is **\$22,326.59.**

I, Zachary M. Stolz, am the lead counsel in this case. I certify that I have reviewed the combined billing statement and am satisfied that it accurately reflects the work performed by all representatives. I have considered and eliminated all time that I believe, based upon my over ten years of practicing before this Court, is either excessive or redundant.

Respectfully submitted,

Hezekiah Green, Jr.

By His Attorneys,

CHISHOLM CHISHOLM & KILPATRICK

/s/Zachary M. Stolz

One Turks Head Place, Ste. 1100

Providence, Rhode Island 02903

(401) 331-6300

Fax: (401) 421-3185

Exhibit A

		<u>Hours</u>
1/25/2016 JZ	Reviewed BVA decision, researched law regarding Veteran's increased rating for bilateral lower extremity radiculopathy. Recommended appeal.	0.30
3/1/2016 DMG	Reviewed file and appeal documents. Filed Notice of Appeal, Notice of Appearance for Robert Chisholm as lead counsel, Fee Agreement, and Declaration of Financial Hardship with the Court. Received, reviewed, and saved Court confirmation email to the file. Updated case file	0.20
3/2/2016 DMG	Reviewed emails from Court with docketed appeal documents. Posted emails to the file. Checked Court docket sheet to ensure Notice of Appeal, Notice of Appearance for Robert Chisholm as lead counsel, Fee Agreement, and Declaration of Financial Hardship were properly docketed. Updated case information and case file	0.20
3/3/2016 JZ	Was assigned case. Drafted and filed notice of appearance. Reviewed case file notes and docket entries for procedural status. Updated client file.	0.20
3/16/2016 JZ	Spoke to client re: status. Note to file on conversation.	0.10
3/22/2016 JZ	Reviewed CAVC emails re: transmittal of BVA decision and copy of same. Ensured copy sent was the same as the one saved in the file. Updated client file.	0.10
4/7/2016 JZ	Received and reviewed Aee notice of appearance. Updated client file.	0.10
4/8/2016 JZ	Spoke to client re: status. Updated client file.	0.10

Exhibit A

		<u>Hours</u>
4/26/2016 JZ	Emailed OGC re: VBMS access. Updated client file.	0.20
4/27/2016 JZ	Emails from and to VA re: obtaining VBMS access.	0.10
4/28/2016 JZ	Reviewed RBA notice. Updated client file.	0.10
4/28/2016 JZ	Emails to and from VACO re: access to VBMS. Reviewed VSO fact sheet and security requirement. Notes to file to prepare for phone call with VACO.	0.40
4/29/2016 JZ	Spoke to VACO re: gaining VBMS access. Note to file on conversation and requirements.	0.60
5/2/2016 JZ	Received and reviewed notice that RBA was received and uploaded to the file. Ensured correct BVA decision was included. Updated client file	0.10
5/4/2016 JZ	Regulatory research re: VBMS access.	0.60
5/5/2016 JZ	Conducted additional research and drafted motion to compel VBMS access	0.80
5/5/2016 BJC	Review draft motion to compel to ensure accuracy and completeness prior to filing and suggest edits to motion to compel	0.40
5/6/2016 JZ	Edited draft motion to compel and drafted motion to stay pending access.	0.70
5/6/2016 ZMS	Discussed VBMS and the strategy to obtain it with Jenna Zellmer. Conducted legal research concerning relevant regulations. Reviewed draft motion for access and commented on same prior to filing	2.80

Exhibit A

		<u>Hours</u>
5/6/2016 JZ	Emailed OGC re: position on motion.	0.10
5/10/2016 JZ	Additional edits to draft motion	0.20
5/11/2016 JZ	Spoke to OGC re: read-only VBMS access. Note to file on conversation.	0.20
5/11/2016 BJC	Prepare and file appearance; update file.	0.10
5/12/2016 JZ	Received and responded to email from OGC re: motion. Updated client file.	0.30
5/12/2016 JZ	Filed motion for VBMS access. Updated file.	0.10
5/13/2016 JZ	Listened to voicemail from OGC. Called back, left voice mail, and emailed response. Edited motion to indicate position. Filed corrected motion. Updated client file	0.30
5/31/2016 JZ	Began legal research on reply and began drafting	0.60
6/1/2016 JZ	Continued drafting reply.	2.80
6/2/2016 BJC	Reviewed regulations on which VA relies, suggest edits to draft reply	1.70
6/2/2016 JZ	Edited reply	2.00
6/3/2016 BJC	Suggest additional edits to draft reply to clarify burden	0.20
6/3/2016 JZ	Conducted additional legal research based on editing comments. Made additional edits to reply	2.10
6/6/2016 JZ	Received and reviewed order for panel. Made final edits to and filed motion for leave to file reply and reply. Called client and left voice mail, note to file.	1.20

Exhibit A

		<u>Hours</u>
6/6/2016 ZMS	Reviewed motion for leave and response to VA's assertions. Conducted legal research concerning VA records.	1.20
6/8/2016 JZ	Reviewed CAVC emails re: judge stamp granting motion to reply to response. Updated client file	0.10
6/8/2016 JZ	Received and reviewed CAVC email re: order scheduling oral argument. Updated client file.	0.10
6/9/2016 JZ	Spoke to client re: oral argument scheduled. Updated client file	0.10
6/14/2016 JZ	Reviewed Court order for supplemental pleading. Updated client file and calendar.	0.10
6/23/2016 JZ	Researched relevant OGC precedential opinions and M21 provisions. Researched jurisdiction of court, relevant pleadings, case law related to VBMS access and access to paper vs electronic claims files. Began drafting response to Court order.	3.00
6/24/2016 JZ	Conducted research on Court's jurisdiction, history of VBMS and other VA computerized systems. Continued drafting response to court order.	2.60
6/24/2016 BJC	Review draft response and suggest edits to draft response - review questions form court, suggest answers to questions 2 and 3	0.40
7/15/2016 JZ	Reviewed Robinson decision to determine applicability to Green. Researched VA training letters and the like to answer third question. Edited supplemental pleading	3.00

Exhibit A

		<u>Hours</u>
7/18/2016 JZ	Researched VA Manual M21, additional edits to supplemental memo.	1.80
7/18/2016 ZMS	Reviewed record and pleadings to date. Reviewed and suggested revisions to response to Court order.	1.00
7/18/2016 JZ	Made final edits and filed response to Court order. Updated client file	0.20
7/19/2016 JZ	Reviewed CAVC email re: Aee response to Court order filed. Reviewed response and updated client file.	0.40
7/21/2016 JZ	Spoke to client re: status. Note to file on conversation.	0.10
8/5/2016 BJC	Review briefs to prepare for assisting in assembling oral argument binder.	0.40
8/5/2016 JZ	Reviewed case file notes, printed relevant pleadings and began to assemble oral argument binder. Began outlining oral argument points	1.20
8/15/2016 JZ	Reviewed and casemapped RBA	3.00
8/15/2016 JZ	Conducted additional legal research. Edited oral argument outline.	0.50
8/15/2016 AB	Reviewed pleadings to prepare for moot court walk through	1.20
8/16/2016 BJC	Prepared for and participated in moot court walk through	0.90

Exhibit A

		<u>Hours</u>
8/16/2016 JZ	Worked on oral argument outline and opening statement, reviewed case law, regulations and researched same. Participated in moot walk-through.	2.40
8/16/2016 JZ	Conducted additional legal research. Edited opening statement and oral argument outline.	1.40
8/16/2016 ZMS	Conducted legal research, reviewed pleadings in preparation of moot court walk through, and participate in same	3.00
8/16/2016 AB	Researched regulations to prepare for moot court walk through; participated in moot court walk through	1.10
8/18/2016 JZ	Reviewed RBA through page 1011. Conducted additional legal research for oral argument and prepared for moot.	1.30
8/19/2016 AB	Researched pertinent law to prepare to participate in moot.	2.60
8/19/2016 AB	Participated in moot; discussed strategy for moving forward.	1.90
8/19/2016 JZ	Reviewed pleadings, case law, and regulations in preparation of moot court. Participated in formal moot.	3.00
8/19/2016 LEO	Reviewed pleadings in preparation for moot. Researched law. Participated in moot court. Discussed oral argument strategies with colleagues.	1.60
8/19/2016 BJC	Prep for and participate in moot	1.60

Exhibit A

		<u>Hours</u>
8/19/2016 JZ	Reviewed Court order re: additional issue for oral argument. Researched Federal Register. Edited oral argument outline and binder.	1.70
8/22/2016 JZ	Conducted legal research, edited oral argument outline and list of applicable cases and regulations.	2.70
8/23/2016 ZMS	Continued legal research and drafting of second argument. Re-drafted significant portions.	2.90
8/23/2016 ZMS	Reviewed Court order. Conducted legal research and discussed oral argument strategy with Landon Overby, Barb Cook, and Jenna Zellmer.	2.50
8/23/2016 JZ	Final run through of opening statement and oral argument outline. Made final edits to outline and finalized oral argument binder.	2.80
8/24/2016 JZ	Travel to DC for oral argument from Boston	3.00
8/24/2016 ZMS	Traveled to DC for oral argument from Providence	2.50
8/25/2016 JZ	Final prep for oral argument. Participated in oral argument. Traveled back to Boston from DC.	3.00
8/25/2016 ZMS	Final preparation for and participation in oral argument. Traveled back to Providence from DC.	3.00
8/29/2016 JZ	Spoke to client re: status of case. Note to file on conversation.	0.10
9/26/2016 JZ	Listened to voice mail from client and called back and left voicemail. Explained waiting for judge decision. Note to file.	0.10

Exhibit A

		<u>Hours</u>
9/26/2016 JZ	Spoke to client re: status	0.10
10/24/2016 JZ	Reviewed judge order denying VBMS access. Updated client file.	0.30
11/3/2016 JZ	Spoke to client re: status. Note to file on conversation.	0.10
11/9/2016 JZ	Reviewed CAVC email re: brief order. Calculated brief deadline. Updated client file.	0.10
11/16/2016 JZ	Reviewed CAVC email re: CLS order. Calculated memo deadline. Updated client file and calendar	0.10
12/2/2016 JZ	Reviewed BVA dec and RBA. Drafted PBC memo, emailed to OGC and CLS. Drafted and filed Rule 33 cert. Updated client file	2.50
12/16/2016 JZ	Reviewed PBC memo, BVA dec, and RBA to prepare for conference. Participated in conference and updated client file on outcome and brief due date.	0.60
12/19/2016 JZ	Spoke to client re: status of case, PBC outcome and briefing deadlines. Note to file on conversation.	0.10
1/9/2017 JZ	Reviewed case file notes, PBC memo and RBA. Began drafting brief - statement of the case.	1.00
1/10/2017 JZ	Finished first draft of statement of the case and outlined argument section. Started summary of argument.	3.00
1/10/2017 JZ	Drafted argument part I and began drafting and outlining second part	2.80

Exhibit A

		<u>Hours</u>
1/11/2017 JZ	Conducted additional legal research for extraschedular argument. Drafted second half of brief, drafted issues presented, edited summary of argument, drafted conclusion.	2.90
1/12/2017 JZ	Incorporated edits to opening brief.	0.30
2/2/2017 JZ	Traveled to the Providence Regional Office to obtain read-only VBMS access to the claims file. Met RO employee and accessed VBMS information, reviewed approximately 10 documents received into VBMS on April 17, 2015. Discussed source of documents with VA employee. Traveled back to office. Drafted note to file on VA RO visit and drafted footnote into opening brief explaining visit to Court. Reviewed documents in the RBA and compared to notes taken on documents viewed on VBMS.	2.50
2/3/2017 JZ	Spoke to client re: status of case. Updated client file.	0.10
2/8/2017 ME	Reviewed and proofread draft opening brief, suggested additional edits	0.40
2/8/2017 JZ	Incorporated additional edits to opening brief. Filed brief. Updated client file.	1.00
3/13/2017 JZ	Spoke to client re: status of case. Explained waiting for Aee brief. Note to file on conversation.	0.10
4/4/2017 JZ	Reviewed email from OGC re: post-brief remand offer. Reviewed opening brief, case file notes, and RBA. Responded to email from OGC to clarify terms of remand offer. Called client to discuss remand offer and left voice mail. Note to file.	0.80

Exhibit A

			<u>Hours</u>
4/4/2017 JZ	Spoke to client re: remand offer. Note to file on conversation. Emailed OGC to accept terms of remand offer and inquire re: stay needed.		0.20
4/4/2017 JZ	Reviewed CAVC email re: motion to stay filed. Updated client file.		0.10
4/5/2017 JZ	Reviewed CAVC email granting motion to stay. Updated client file		0.10
4/25/2017 JZ	Received and reviewed message re: missed call from veteran. Returned client's call and left voicemail. Note to file		0.20
5/2/2017 JZ	Reviewed case file notes and emailed OGC re: upcoming JMR due date.		0.10
5/3/2017 JZ	Received and reviewed email from OGC re: draft JMR attached. Reviewed case file notes on bases for remand and opening brief. Reviewed draft JMR and made minor edits.		0.30
5/4/2017 CM	Review BVA decision. Review remand offer. Review JMR for legal accuracy and suggest edits prior to filing		0.20
5/4/2017 JZ	Reviewed and incorporated additional edits into JMR. Emailed edited JMR to OGC. Printed, signed, scanned, and emailed JMR signature page to OGC.		0.20
5/5/2017 JZ	Reviewed and responded to OGC re: JMR edits, finalized agreement on cites in JMR. Reviewed CAVC email re: JMR filed. Reviewed and compared to language agreed upon. Updated client file.		0.20

Exhibit A

		<u>Hours</u>
5/9/2017 JZ	Spoke to client re: JMR recently filed. Discussed next steps and updated client file on conversation	0.10
5/15/2017 JZ	Reviewed CAVC emails re: remand order and mandate docketed. Updated client file and calendar.	0.20
5/15/2017 DMG	Prepared and e filed Notice of Appearance. Received, reviewed, and saved Court confirmation email. Checked docket sheet to ensure proper filing. Updated case file.	0.20
5/15/2017 DMG	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Petition for proofreading and billing accuracy review.	0.90
5/15/2017 ZMS	Reviewed EAJA Petition for proofreading purposes and to ensure billing accuracy	0.30
		<u>107.60</u>
		<u>Amount</u>
		\$21,275.02
Expenses		
Airfare for oral argument - JZ		289.16
Airfare for oral argument - ZS		250.20
Hotel - Oral Argument - ZS		228.25
Hotel - Oral Argument- JZ		228.25
Parking at airport - ZS		36.00
Travel in DC for Oral Arg - ZS		19.71
Total Expenses		<u>\$1,051.57</u>

Exhibit A

	<u>Amount</u>
107.60	\$22,326.59

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Angela Bunnell	6.80	198.69	\$1,351.09
Barbara J. Cook	5.70	189.16	\$1,078.20
Christian McTarnaghan	0.20	198.69	\$39.74
Danielle M. Gorini	1.50	198.69	\$298.04
Jenna Zellmer	72.20	198.69	\$14,345.48
Landon E. Overby	1.60	167.58	\$268.13
Megan Ellis	0.40	198.69	\$79.48
Zachary M. Stolz	19.20	198.69	\$3,814.86

EXHIBIT B

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.