

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

ERIC C. CANTRELL)	
Appellant,)	
)	
v.)	CAVC No. 15-3439
)	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 **\$30,174.78**.

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 a precedential decision, the Court set aside and remanded that portion of the Board's August 13, 2015 decision denying referral for consideration of an extraschedular evaluation for service connected post - surgery ulcerative colitis and entitlement to TDIU based upon the Board's failure to provide an adequate statement of reasons or bases. See

pages 1-18 of the Panel Decision. The mandate was issued on July 11, 2017

Based upon the foregoing, Mr. Cantrell 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. Cantrell 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. Cantrell 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).

Six attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Barbara Cook, Danielle M. Gorini, Megan Ellis, Elizabeth Olien, Christian McTarnaghan, and Zachary Stolz.¹ Attorney Barbara Cook graduated from University of Michigan Law School in 1977 and the *Laffey Matrix* establishes

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 *Baldrige 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 *Baldrige*, 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.").

that \$581.00 is the prevailing market rate for an attorney with her experience.²

Danielle Gorini graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$465.00 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. Elizabeth Olien graduated from Boston College Law School in 2013 and the *Laffey* Matrix establishes that \$322.00 is the prevailing market rate for an attorney with her experience. Christian McTarnaghan graduated from Suffolk University Law School in 2014 and the *Laffey* Matrix establishes that \$322.00 is the prevailing market rate for an attorney with his experience. Zachary Stolz graduated from the University of Kansas School of Law

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

in 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 \$195.23 per hour for Ms. Gorini, Ms. Ellis, Ms. Olien, Mr. McTarnaghan, and Mr. Stolz for representation services before the Court.³ This rate per hour, multiplied by the number of hours billed for these five attorneys (103.20) results in a total attorney's fee amount of \$20,147.69.

Appellant seeks attorney's fees at the rate of \$189.16 per hour for Ms. Cook's representation services before the Court.⁴ This rate per hour, multiplied by the

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

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

number of hours billed for Ms. Cook (45.50) results in a total attorney's fee amount of \$8,606.79.

In addition, Appellant seeks attorney's fees at the rate of \$164.66 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 (0.50) results in a total attorney's fee amount of \$82.33.

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

Filing Fee: \$50.00

Flight to DC for oral argument – BC: \$420.40

was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to April 2016 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn 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 Elczyn 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 April 2016, the period of time during which the opening brief was filed with the Court.

Flight to DC for oral argument – CM:	\$239.40
Hotel in DC for oral argument – BC:	\$319.26
Hotel in DC for oral argument – CM:	\$227.91
Travel in DC for oral argument – BC:	\$60.00
Parking at the airport while in DC – BC:	\$21.00

Based upon the foregoing, the total fee sought is **\$30,174.78.**⁶

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,

Eric C. Cantrell
By His Attorneys,
CHISHOLM CHISHOLM & KILPATRICK
/s/Zachary M. Stolz
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Providence, Rhode Island 02903
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⁶ In the exercise of billing judgment, Appellant has voluntarily eliminated 12.00 hours of time or \$2,342.76 for those attorneys who participated in assisting in the preparation for the oral argument.

Exhibit A

		<u>Hours</u>
8/18/2015 LEO	Reviewed BVA decision. Researched law regarding Veteran's service connected disabilities and TDIU. Recommended case for appeal.	0.50
9/11/2015 DMG	Reviewed file and appeal documents. Filed Notice of Appeal, Notice of Appearance for Robert Chisholm as lead counsel, and Fee Agreement with the Court. Received and reviewed confirmation email from Court. Posted email to the file. Updated case file	0.20
9/11/2015 DMG	Received and reviewed emails from Court with docketed appeal documents. Posted emails to the file. Checked docket sheet and ensured Notice of Appeal, Notice of Appearance for Robert Chisholm, and Fee Agreement were properly docketed. Updated case information and case file	0.20
9/30/2015 EO	Received, reviewed, and saved BVA decision copy and transmittal. Ensured copy of decision was correct and updated client file.	0.10
11/10/2015 EO	Received and reviewed notice that RBA was received and uploaded to the file, ensured correct BVA decision was included, and updated client file.	0.10
11/18/2015 EO	Received, reviewed, and updated client file with appellee's notice of appearance.	0.10
11/24/2015 EO	Reviewed record through page 1003	2.60
11/25/2015 EO	Finished reviewing RBA. Drafted RBA status letter to the client.	0.70
11/30/2015 EO	Received, reviewed, and saved notice to file brief. Calculated brief due date and updated file.	0.10

Exhibit A

		<u>Hours</u>	
12/22/2015	EO	Received, reviewed, and saved PBC order. Calculated memo deadline and updated file.	0.10
12/23/2015	EO	Client called to discuss status. Documented call.	0.20
1/5/2016	BJC	Reviewed PBC memo and suggested revisions.	0.20
1/5/2016	EO	Edited memo and emailed same to VA and CLS. Drafted and filed Rule 33 certificate of service.	0.20
1/5/2016	EO	Drafted PBC memo.	2.90
1/19/2016	EO	Called client to discuss PBC and left message. Note to file.	0.10
1/19/2016	EO	Prepared for, participated in, and drafted memo to the file after PBC	1.10
3/26/2016	EO	Continued drafting statement of the case.	0.90
3/26/2016	EO	Began drafting statement of the case for opening brief	3.00
3/27/2016	EO	Drafted argument section of opening brief	3.00
3/27/2016	EO	Continued drafting argument section of opening brief	3.00
3/28/2016	EO	Completed drafting argument section of opening brief and drafted remaining sections.	2.20
3/29/2016	BJC	Reviewed opening brief and suggested edits to same prior to filing.	0.70
4/1/2016	EO	Began editing brief	0.70
4/4/2016	EO	Made final edits to opening brief, proofread, cite checked, and filed with the Court.	1.10

Exhibit A

		<u>Hours</u>
4/4/2016 EO	Continued editing brief	1.70
4/4/2016 ZMS	Reviewed case map of RBA and notes on case. Reviewed revised opening brief to ensure completeness of edits and suggested final revisions prior to filing	2.00
4/4/2016 EO	Completed edits to brief.	2.80
4/9/2016 BJC	Prepared and entered notice of appearance; updated file.	0.10
4/27/2016 ME	Prepared and filed notice of appearance. Updated file.	0.10
6/3/2016 ME	Received and reviewed email from VA counsel regarding position on extension to file brief, responded	0.10
6/3/2016 ME	Received and reviewed notice of Appellee filing of motion for extension to file brief, reviewed motion, updated client file and calendar	0.10
6/3/2016 ME	Received and reviewed Court order granting Aee motion for extension to file brief, updated client file and calendar	0.10
7/5/2016 ME	Received and review notice of filing of Appellee brief, updated client file and calendar to reflect receipt and deadline for reply	0.10
7/6/2016 ME	Client called, gave status update and discussed next steps in case	0.10
7/11/2016 ME	Reviewed case notes, opening brief, and Appellee's brief, reviewed medical evidence of record, outlined arguments for reply brief	2.10

Exhibit A

		<u>Hours</u>
7/12/2016 ME	Continue to draft reply brief	2.80
7/12/2016 ME	Drafted first argument of reply brief	3.00
8/10/2016 CM	Draft and file notice of appearance. Update client file.	0.10
8/17/2016 CM	Continue to draft reply brief.	1.60
8/17/2016 CM	Complete draft of reply brief	2.30
8/26/2016 BJC	Review reply brief and suggest edits to entire brief	1.10
8/31/2016 CM	Revise reply brief arguments.	2.40
9/2/2016 CM	Make final revisions to reply brief. Ensure accuracy of all record and legal citations. File brief.	1.10
9/8/2016 CM	Receive and review notice with record of proceedings. Update client file. Update client calendar.	0.10
9/9/2016 CM	Telephone call with client to discuss status of case.	0.10
9/22/2016 CM	Review ROP. Compare to all documents filed in all briefs. Draft and file letter accepting ROP. Update client file.	0.30
10/1/2016 CM	Receive and review judge assignment. Update file.	0.10
10/3/2016 CM	Left voicemail for client. Note to file.	0.10
10/3/2016 CM	Telephone call with client to discuss status of case.	0.10

Exhibit A

		<u>Hours</u>
11/9/2016 CM	Receive and review panel and oral argument order from the Court. Update client file. Update client calendar.	0.10
11/10/2016 CM	Telephone call with client to discuss status of case.	0.10
12/1/2016 CM	Receive and review supplemental briefing order. Update client file. Calculate Secretary's supplemental memo deadline. Update client calendar.	0.10
12/16/2016 CM	Receive and review notice with VA's supplemental memo of law. Update client file.	0.10
12/19/2016 BJC	Start to draft response to Court's Order, outline arguments, read OGC response in depth	2.00
12/26/2016 BJC	Edit draft of response to Court's Order	0.70
12/26/2016 BJC	Continue to draft response to Court's Order, add argument about BVA findings.	2.00
12/27/2016 CM	Research due process violations due to lack of standards in preparation of reviewing response to Court Order drafted by Barbara Cook.	0.90
12/27/2016 CM	Research VA case law pertaining to areas where VA has discretion, but it still utilizes a standard in preparation of reviewing response to Court's Order prepared by Barbara Cook	1.90
12/28/2016 CM	Research due process and fair process case law in preparation of reviewing response to Court's Order drafted by Barbara Cook.	2.90
12/29/2016 BJC	Make additional edits to response to Court's Order	2.50

Exhibit A

		<u>Hours</u>
12/29/2016 CM	Telephone call with client to discuss status of case.	0.20
12/30/2016 BJC	Make additional edit to draft to include distinguishing Nyeholt	1.50
12/30/2016 CM	Review supplemental pleading. Suggest edits to supplemental pleading.	1.30
12/31/2016 BJC	Add case law to the revised draft response to the Court's Order	1.30
1/3/2017 CM	Receive and review Court order with date and time of oral argument. Update client file. Update client calendar.	0.10
1/3/2017 ZMS	Telephone conversation with client concerning status of case and order for oral argument.	0.30
1/3/2017 BJC	Filed response to Court Order. Updated file.	0.10
1/18/2017 CM	Telephone call with client to discuss case.	0.20
2/6/2017 CM	Review new 8940 from client in preparation of inclusion with supplemental authorities	0.20
2/6/2017 CM	Begin to draft Solze letter. Redact Form 8940 and addendum.	0.30
2/7/2017 BJC	Review Solze letter and suggest edits prior to filing	0.10
2/7/2017 BJC	Send email to OGC regarding possible remand	0.10
2/7/2017 BJC	Sent email to OGC about Solze letter	0.10
2/7/2017 CM	Edit Solze letter.	0.20

Exhibit A

		<u>Hours</u>	
2/7/2017	CM	Proofread Solze letter prior to filing. File Solze letter.	0.30
2/8/2017	BJC	Review pleadings in preparation for moot court in preparation for oral argument	0.50
2/8/2017	CM	Review all pleadings. Prepare outline for moot court in preparation for oral argument	2.00
2/9/2017	BJC	Start to review RBA for details in preparation for composing oral argument binder.	1.30
2/10/2017	BJC	Participate in moot court in preparation for oral argument	0.70
2/10/2017	BJC	Review compensation and pension examinations and rating decision for facts and procedure to continue preparation of oral argument binder	1.00
2/10/2017	BJC	Review BVA decision and briefs in preparation of continuing to prep oral argument binder	1.20
2/10/2017	CM	Participate in moot court in preparation of oral argument	0.70
2/10/2017	CM	Continue to prepare for first moot court in preparation of oral argument	2.00
2/10/2017	ZMS	Prepared for and participated in moot court in preparation of oral argument. Preparations included legal review of all pleadings and record, research concerning award of TDIU, and recent caselaw comparing IU with extraschedular awards.	3.00
2/12/2017	CM	Review records to outline facts of medical symptoms and accomodations made at work to add to information in oral argument binder	3.00

Exhibit A

		<u>Hours</u>
2/14/2017 CM	Continue to reivew record and note facts of medical symptoms and accommodations made in order to add to oral argument binder	1.40
2/15/2017 CM	Continue to prepare summary of all facts of medical symptoms and accommodations made at work in preparation for oral argument.	2.40
2/16/2017 CM	Research and define all medical terms in preparation for oral argument.	0.90
2/16/2017 CM	Continue to prepare outline of all evidence contained in record in preparation for oral argument.	2.90
2/17/2017 CM	Continue to define all medical terms and outline evidence regarding work accommodations in preparation for oral argument.	2.70
2/19/2017 BJC	Re review medical records and ensure relevant ones included in oral argument binder.	1.10
2/19/2017 BJC	Outline and review procedure of each claim including TDIU in preparation for oral argument	2.40
2/20/2017 BJC	Outline oral argument	1.00
2/20/2017 CM	Review record for ratings. Compare to text of diagnostic code to prepare for extrascheular argument	0.60
2/20/2017 CM	Review entire record for procedural history and to answer questions at oral argument about rating at specific times	2.80
2/21/2017 CM	Create chart of all symtoms by date and origin to prepare for oral argumnet.	1.60

Exhibit A

		<u>Hours</u>
2/23/2017 BJC	Review relevant cases for possible supplemental authority	0.50
2/23/2017 BJC	Review draft motion and supplemental authorities and suggest edits to same.	1.50
2/23/2017 CM	Draft 30(b) letter. Read and review two cases to be cited. File same.	1.10
2/24/2017 BJC	Participate in formal moot	1.20
2/24/2017 BJC	Prepare for formal moot	2.70
2/24/2017 CM	Prepare and participate in formal moot.	1.70
2/24/2017 ZMS	Prepared for and participate in final, formal moot.	3.00
2/26/2017 BJC	Read regulatory history as part of final preparation for oral argument	1.00
2/26/2017 BJC	Review cited OGC cases as part of final preparation for oral argument	2.80
2/26/2017 BJC	Travel to DC for oral argument	4.00
2/26/2017 BJC	Review cited Appellant cases as part of final preparation for oral argument	2.20
2/26/2017 CM	Travel to airport.	1.00
2/26/2017 CM	Final prep for oral argument.	1.00
2/26/2017 CM	Travel from Boston to DC.	2.80
2/27/2017 BJC	Travel to court and meet with Greg Block, review notes for oral argument	1.00

Exhibit A

		<u>Hours</u>	
2/27/2017	BJC	Participate in oral argument	1.00
2/27/2017	BJC	travel back from DC	3.70
2/27/2017	CM	Travel back from airport.	1.00
2/27/2017	CM	Travel from DC to Boston.	2.70
2/27/2017	CM	Participate in oral argument.	1.00
2/28/2017	CM	Left voicemail for client requesting call back. Note to file.	0.10
2/28/2017	CM	Telephone call with client to discuss oral argumnet.	0.20
3/6/2017	BJC	Review 30(b) letter drafted by CM and suggest revisions prior to filing	0.90
3/6/2017	CM	Carefully read the Michael R. Johnson mem dec. Draft 30(b) letter to Court about decision.	2.00
3/13/2017	BJC	Make final edits to supplemental authority, proofread, file same with the Court.	1.10
4/3/2017	BJC	Review and suggest edit to Solze letter	0.20
4/3/2017	CM	Draft Solze letter to Court about new 8940 and addendum explanation of mistake on original 8940.	0.40
4/5/2017	CM	File Solze notice and update file.	0.10
4/18/2017	CM	Telephone call with client to discuss favorable precedential decision.	0.20
4/18/2017	CM	Receive and review favorable precedential decision. Update client file.	0.70

Exhibit A

Expenses

	<u>Amount</u>
Filing Fee	50.00
Flight to DC - BC	420.40
Flight to DC - CM	239.40
Hotel in DC - BC	319.26
Hotel in DC - CM	227.91
Parking at airport - BC	21.00
Travel in DC for Oral Arg- BC	60.00
Total Expenses	<u>\$1,337.97</u>
	<u>149.20</u> <u>\$30,174.78</u>

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Barbara J. Cook	45.50	189.16	\$8,606.79
Christian McTarnaghan	56.50	195.23	\$11,030.47
Danielle M. Gorini	1.60	195.23	\$312.38
Elizabeth Olien	26.70	195.23	\$5,212.63
Landon E. Overby	0.50	164.66	\$82.33
Megan Ellis	8.50	195.23	\$1,659.43
Zachary M. Stolz	9.90	195.23	\$1,932.78

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.