

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

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|---------------------------------------|---|-----------------------|
| JOHN B. SPEIGNER, JR., |) | |
| Appellant, |) | |
| |) | |
| v. |) | Vet. App. No. 16-2811 |
| |) | |
| ROBERT L. WILKIE, |) | |
| Acting Secretary of Veterans Affairs, |) | |
| Appellee. |) | |

**TABLE OF CONTENTS FOR APPELLANT’S REPLY MEMORANDUM IN
SUPPORT OF HIS APPLICATION FOR AN AWARD OF REASONABLE
ATTORNEYS’ FEES AND EXPENSES**

Pursuant to U.S. Vet. App. Electronic Rule 7, this PDF file is paginated:

| | |
|--|----|
| Table of Contents | 1 |
| Appellant’s Reply Memorandum in Support of his Application for an Award of Reasonable Attorneys’ Fees and Expenses..... | 2 |
| Exhibit A | 16 |
| Exhibit B | 18 |
| Exhibit C | 23 |
| Exhibit D | 25 |

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

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**APPELLANT’S REPLY MEMORANDUM IN SUPPORT OF HIS APPLICATION
FOR AN AWARD OF REASONABLE ATTORNEYS’ FEES AND EXPENSES**

Preliminary Statement

Pursuant to U.S. Vet. App. Rule 39(a)(2), Appellant, John B. Speigner, Jr., submits this reply memorandum to address the arguments advanced by the Secretary in his Response to Appellant’s Application for Attorneys’ Fees and Expenses (Sec. Resp. or Response) dated January 11, 2018.

On October 28, 2017, Appellant filed his Application for an Award of Reasonable Attorneys’ Fees and Expenses (EAJA App.) pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), and U.S. Vet. App. Rule 39, in the amount of \$11,605.72. In his Response, the Secretary concedes that Appellant’s fee petition satisfies the EAJA jurisdictional requirements. Sec. Resp. at 1. The Secretary’s opposition to the award sought by Appellant is based solely on one argument: that the Court should reduce the award sought on the ground that the hourly rates sought for two of the five advocates who expended time on Appellant’s appeal are “unreasonable and contrary to law.” Sec. Resp. at 3.

The hourly rates for which compensation is sought for the five advocates who expended time on the appeal are as follows:

| <u>Name of Advocate</u> | <u>Hourly Rate</u> | <u>Compensable Hours Expended</u> |
|--------------------------------|---------------------------|--|
| Attorney Katy S. Clemens | \$201.89 | 5.2 |
| Attorney Rory E. Riley | \$201.89 | 0.4 |
| Attorney Caitlin M. Milo | \$201.89 | 20.5 |
| Attorney David Rollins-Boyd | \$203.98 | 29.2 |
| Paralegal Angela Nedd | \$157.00 | 2.2 |

See EAJA App. at 9-10. The three hourly rates that the Secretary does not oppose are: (1) the \$157 hourly rate sought for Ms. Nedd, a paralegal with the National Veterans Legal Services Program (NVLSP), based on the paralegal market rates for the Washington, D.C. metropolitan area (*id.* at 9 n.2); (2) the \$201.89 hourly rate sought for Ms. Clemens, an attorney with NVLSP, based on the market rates for attorneys and an upward adjustment based on the CPI-U in the Washington, D.C. metropolitan area (*id.*); and (3) the \$203.98 hourly rate sought for Mr. Rollins-Boyd, an attorney with the Boston office of the law firm WilmerHale, based on the prevailing market rates for attorneys and the CPI-U in the Boston metropolitan area (*id.*).

The two hourly rates that the Secretary *does* oppose are: (1) the \$201.89 hourly rate sought for Ms. Milo, an attorney with NVLSP, based on the market rates for attorneys and an upward adjustment based on the CPI-U in the Washington, D.C. metropolitan area (*id.*); and (2) the \$201.89 hourly rate sought for Ms. Riley, an attorney

with NVLSP, based on the market rates for attorneys and an upward adjustment based on the CPI-U in the Washington, D.C. metropolitan area (*id.*).

Appellant's understanding of the basis for the Secretary's opposition to the hourly rates sought for attorneys Milo and Riley is that although they were both attorneys with NVLSP, and the sole office of NVLSP is and has always been in Washington, D.C., the primary residential home of both attorneys was outside the Washington, D.C. metropolitan area and both attorneys were physically located in their primary residence when attorney Riley expended the 0.4 hours and attorney Milo expended the 20.5 hours for which compensation is sought. According to the Secretary, under these facts, the CPI-U for the Washington, D.C. metropolitan area relied upon by Appellant does not apply to the request for an upward adjustment in their hourly rates above \$125, and, since Appellant did not support his request for an upward adjustment with evidence of the appropriate CPI-U, the Court should award compensation for the time expended by attorneys Milo and Riley at the base hourly rate of \$125.¹

As Appellant demonstrates below, the CPI-U for the Washington, D.C. metropolitan area is the appropriate evidentiary basis for an upward adjustment in the hourly rates sought for attorneys Milo and Riley, and, as a result, the Court should award the full amount of attorney fees sought by Appellant.

¹ To the extent that the Secretary may be arguing for a \$125 rate for *all* time billed in this case, Appellant has met his burden by providing the required data for all advocates' billing time in this case.

ARGUMENT

I. APPELLANT RELIED ON THE APPROPRIATE CPI-U IN REQUESTING AN UPWARD ADJUSTMENT FOR THE HOURLY RATES FOR ATTORNEYS MILO AND RILEY

The dispute in this case over the appropriate CPI-U to use for calculating the upward adjustment in the hourly rates for attorneys Milo and Riley turns on the proper interpretation of the Federal Circuit’s decision in *Parrott v. Shulkin*, 851 F.3d 1242 (Fed. Cir. 2017). In *Parrott*, counsel for the fee petitioner had a “principal office” in Dallas, Texas, but also “maintained offices” in Little Rock, Arkansas, and San Francisco, California, and he performed at least some of the work on Appellant’s judicial appeal while in each of the three offices. 851 F.3d at 1245.

The first legal issue resolved by the Federal Circuit was whether this Court should use a national CPI or a local CPI in calculating the appropriate upward adjustment to the base hourly rate of \$125. The Federal Circuit held that “the local CPI approach, where a local CPI is available . . . is more consistent with the EAJA than the national approach.” 851 F.3d at 1249. This holding was based on the fact that the appropriate hourly rate under EAJA is based on “two factors – market rates and the cost of living” and these two factors are “inherently local in nature.” 851 F.3d at 1249. Moreover, the Federal Circuit stated, “using the local CPI approach advances” the EAJA’s two goals of

assist[ing] litigants with meritorious claims in securing *suitable counsel*, whose costs may exceed national rates. Undercompensating such applicants would deter them from bringing lawful claims against the government, thereby frustrating EAJA’s stated intent. [citations omitted] Similarly, the local CPI approach reduces taxpayer exposure by preventing windfalls to *attorneys whose costs of living* lie below the national average. [citations omitted]

851 F.3d at 1249-50 (emphasis added); *see also Baker v. Bowen*, 839 F.2d 1075, 1083 (5th Cir. 1988); Equal Access to Justice Act, Pub. L. No. 96-481, § 202, 94 Stat. 2325 (1980).

Thus, the Federal Circuit held that the local CPI approach is more consistent with EAJA because it focuses on “the costs” or “costs of living” actually experienced by counsel for the fee petitioner. Indeed, after noting that the fee petitioner’s attorney “worked in – and maintained – distinct offices in San Francisco, Dallas, and Little Rock,” the Federal Circuit held that this Court “properly concluded that [the] EAJA application should have apportioned [the attorney’s] time to those locations and used the CPI for each locality.” 851 F.3d at 1250. To do otherwise, “would unmoor the calculated fees from ‘prevailing market rates’ and ‘cost of living’ experienced by the . . . applicant’s attorney.” *Id.*

Accordingly, the key to the proper application of *Parrott* to the facts of this case involves determining the location of the “costs” or “costs of living” experienced by attorneys Milo and Riley. We now turn to the relevant facts regarding the “cost” or “costs of living” experienced by these two attorneys.

A. The Relevant Facts Regarding the Attorneys’ Cost or Costs of Living

As the Secretary is apparently aware, attorney Milo is employed by NVLSP; NVLSP is a non-profit organization that maintains only one office, which is located in Washington, D.C.; the address used by attorney Milo on the Court’s website list of practitioners is the address of NVLSP’s Washington D.C. office;² and the Secretary sends

² See http://uscourts.cavc.gov/public_list.php.

all correspondence and Records Before the Agency in attorney Milo's cases before this Court to her at her NVLSP Washington, D.C. address. As the Declaration of Caitlin M. Milo (Milo Decl.), appended as Exhibit A, evidences, when she worked on the appeal in this case, attorney Milo was physically present in her primary residence Swedesboro, New Jersey. The large majority of attorney Milo's work for NVLSP occurs while she is physically present in her New Jersey residence.³

Attorney Milo uses a computer workstation owned and issued by the NVLSP's D.C. office, which functions by remotely accessing a corresponding physical computer tower with its own dedicated space in NVLSP's D.C. office. The computer workstation, and the tower in the D.C. office, are hosted on a server located in NVLSP's D.C. office, all supported by IT staff and software located at NVLSP's D.C. office. All computer filings, e-mail correspondence, and data storage are uploaded, transmitted, e-filed, and stored via the NVLSP-owned computer workstation through the tower and server located in NVLSP's D.C. office. All of the other office equipment and supplies used by attorney Milo are owned by NVLSP, and the rates for all of this equipment and its maintenance, as well as regular monthly fees for internet access and for the hardware and software when

³ As the fee petition in this case indicates, the 0.4 hours expended by attorney Riley was expended on June 22, 2016, when attorney Riley worked for NVLSP. It is Appellant's belief that attorney Riley was located in her primary residence in Charlotte, North Carolina when she expended 0.4 hours on June 22, 2016. Attorney Riley no longer works for NVLSP. The discussion that follows in the text below with regard to the costs and cost of living relevant to attorney Milo are identical to the cost and costs of living relevant to attorney Riley as they existed in June 2016. Thus, the facts relevant to attorney Riley are the same as the facts relevant to attorney Milo.

applicable, are paid by NVLSP's D.C. office at Washington, D.C. area rates. *See* Declaration of Barton F. Stichman (Stichman Decl.), appended as Exhibit B, at ¶¶ 4-8.

All of the administrative support provided in attorney Milo's cases is provided by NVLSP employees who work in NVLSP's D.C. office. Attorney Milo's salary and employee benefits are all administered by NVLSP employees located in NVLSP's Washington, D.C. office. *See* Stichman Decl. at ¶¶ 9-10. Throughout attorney Milo's employment with NVLSP, her salary has been calculated based on years of experience and seniority, with adjustments for work performance, using the same salary scale that NVLSP uses for all of its attorneys, almost all of whom perform their work in NVLSP's Washington, D.C. office. In other words, the fact that attorney Milo does most of her work for NVLSP while located in her residence in New Jersey has no effect on the magnitude of her salary. *See* Stichman Decl. at ¶ 11.

Attorney Milo's work cellular telephone is owned by NVLSP's D.C. office. Attorney Milo's direct work telephone number, as well as her extension, are hosted by the telephone exchange at NVLSP's D.C. office, and any telephone calls to these numbers or extensions are automatically forwarded to attorney Milo's work cellular telephone. This cellular telephone, as well as the telephone exchange on which her telephone number is hosted, is maintained and serviced on the D.C. office's cellular and office telephone plans, paid at Washington, D.C. area rates. *See* Stichman Decl. at ¶¶ 12-14.

All of attorney Milo's mail, including mail from clients, this Court, or the VA Office of the General Counsel, comes through NVLSP's D.C. office and is sorted, scanned, uploaded and/or sent via e-mail to attorney Milo as necessary by administrative

and legal support staff employed by and located at NVLSP's D.C. office. Similarly, all mail sent from NVLSP, including from attorney Milo, is printed, copied, stamped, and mailed from administrative and legal support staff employed by and located at NVLSP's D.C. office. In fact, one hundred percent of the supportive IT and clerical work at NVLSP, including in support of attorney Milo, is done by staff members in NVLSP's D.C. office. *See* Stichman Decl. at ¶¶ 15-17.

B. Application of the *Parrott* Principles to the Relevant Facts

As Appellant understands the argument advanced by the Secretary in this case,⁴ the appropriate CPI-U to use in calculating an upward adjustment in the base hourly rate of \$125 depends entirely upon the physical location of the attorney when the attorney is working on the appeal. Under this rule, if an attorney expended 20 hours of compensable time on an appeal, and 8 of the hours were expended while the attorney was in his office in Butte, Montana, 7 hours were expended while the attorney was in New York City, visiting his ailing mother, and 5 hours were expended in Tampa, Florida, while on vacation, the appropriate CPI-U is (a) the CPI-U associated with Butte, Montana for the 8 hours, (b) the CPI-U associated with New York City for the 7 hours, and (c) the CPI-U associated with Tampa, Florida for the 5 hours.

⁴ The Secretary correctly states that counsel for the Secretary and counsel for Appellant conferred and attempted to negotiate a settlement of this fees dispute after the filing of the fee petition and prior to the filing of the Secretary's Response. *See* Sec. Resp. at 2-3. Counsel for Appellant believed that the details surrounding these negotiations were privileged and confidential. The Secretary's Response, however, describes these negotiations in some detail. *Id.* The description of these negotiations in the Secretary's Response is both inaccurate and incomplete. Appellant does not present here a description of the negotiations because Appellant believes that these negotiations are privileged and confidential and not relevant to the proper disposition of this dispute.

Appellant disagrees. The principles that derive from *Parrott* require a focus on the cost or costs of living actually experienced by counsel for the fee petitioner. *Where* these costs or costs of living are “actually experienced” does not necessarily correspond to the attorney’s physical location at any particular time. As the Federal Circuit stated in *Parrott*, the “local CPI approach typically focuses on where an attorney works *and* has his or her office.” 851 F.3d at 1245 (emphasis added).

In this regard, it is important to take into account that overhead costs are an important part of the calculation in determining proper attorneys’ fee rates. The CPI-U itself, upon which cost of living adjustments to attorneys’ fees under the EAJA are based, is calculated based upon the costs of a basket of goods and services in the region. *See Bureau of Labor Statistics Handbook of Methods*, Chapter 17, available at <https://www.bls.gov/opub/hom/pdf/homch17.pdf>; *see also Dewalt v. Sullivan*, 963 F.2d 27, 28 (3rd Cir. 1992). As this Court has held,

Applicants are not permitted to bill for and collect fees for clerical work and the work of general support staff. Because of the assumption that ‘work done by librarians, clerical personnel and other support staff . . . [is] generally considered within the overhead component of a lawyer’s fee,’ costs for such work are not properly charged to the government under EAJA. *Role Models [Am. v. Brownlee]*, 353 F.3d [962] at 974 [D.C. Cir. 2004] (*citing In re Olson*, 884 F.2d [1415] at 1426-27 [D.C. Cir. 1989]).

Baldrige and Demel v. Nicholson, 19 Vet. App. 227, 236 (2005). The U.S. District Court for the Eastern District of Pennsylvania similarly held that “Congress cannot have intended to permit attorneys to recover separately for office rent, utilities, and secretarial salaries, which are generally incorporated in attorneys’ hourly billing rates....” *Williams v. Bowen*, 684 F.Supp. 1305, 1308 n.3 (E.D. Pa. 1988).

In fact, overhead costs have been part of the equation in calculating attorneys' fees from the inception of the EAJA. In a U.S. Senate Judiciary Committee hearing about the still-nascent EAJA, when answering a question about whether the then \$75 cap on attorneys' fees should be changed, the representative from the American Bar Association responded with the following comment:

An effort to reduce the \$75 limit down to something that is equated to salary divided into an hourly basis that is paid to Government attorneys is a mistake. This is not a basis for comparability. If you were to take that salary and add onto it the overhead represented by the cost of support services, rent, utilities, and all those things, alone, it would go way up. The mistake, on the part of some people, is to believe that whatever the hourly rate charged by lawyers is 100 percent profit.

Hearing before the Subcommittee on Agency Administration of the Committee on the Judiciary, United States Senate, Ninety-seventh Congress, Second Session, on The Equal Access to Justice Act, December 9, 1982, *available at* <https://babel.hathitrust.org/cgi/pt?id=pst.000047046153;view=1up;seq=217> (last accessed March 12, 2018).

It is therefore apparent that in the example above, it would be a mistake to award fees using the CPI-U associated with New York City for the 7 hours expended in New York City by the attorney whose office was in Butte, Montana. Since the cost of living in Butte, Montana is lower than that in New York City, awarding fees based on the cost of living in New York City would, in the words of the Federal Circuit in *Parrott*, lead to “windfalls to attorneys whose costs of living lie below the national average.” 851 F.3d at 1250. On the other extreme, if fees were awarded using the CPI-U associated with Butte, Montana to an attorney whose sole office was in New York City but who expended time on a case while in Butte, Montana, it would lead to undercompensation and such a rule

would deter veterans “from bringing lawful claims against the government, thereby frustrating EAJA’s stated intent.” *Parrott*, 851 F.3d at 1249.

When the foregoing principles are applied to the facts of this case set forth in section A above, it should be plain that the “costs” and “costs of living” associated with the work of attorney Milo and the other NVLSP advocates for Appellant in this case were “actually experienced” in Washington, D.C., even though attorney Milo was physically located in New Jersey when she worked on this appeal. This compels the conclusion that the CPI-U used in this fee petition for NVLSP attorneys Milo, Riley, and Clemens – the CPI-U for the Washington, D.C. metropolitan area – is the appropriate local CPI.

II. USE OF THE BOSTON, MASSACHUSETTS CPI-U FOR ATTORNEY ROLLINS-BOYD IS NOT INCONSISTENT WITH USE OF THE WASHINGTON, D.C. CPI-U FOR ATTORNEYS MILO, CLEMENS, AND RILEY

In his Response, the Secretary also argues that Appellant’s use of the Boston, Massachusetts CPI-U for WilmerHale attorney David Rollins-Boyd is inconsistent with Appellant’s request for use of the Washington, D.C. CPI-U for NVLSP’s attorneys. Sec. Resp. at 7. The hourly rate that Appellant requested for Mr. Rollins-Boyd was calculated using the CPI-U for Boston-Cambridge-Newton, MA-NH, where Mr. Rollins-Boyd’s WilmerHale office is located.⁵ The Secretary argues that this is inconsistent because:

Mr. Rollins-Boyd was working alongside his colleagues at NVLSP
Thus, it appears Appellant’s counsel would agree that an adjusted local rate is appropriate to reflect the physical location of a practicing attorney, but

⁵ See Mr. Rollins-Boyd’s biography, with his Boston, MA, office address, at https://www.wilmerhale.com/david_rollins-boyd/. The law firm of Wilmer, Cutler, Pickering, Hale & Dorr, LLP, often goes by the shorter name of WilmerHale. See www.wilmerhale.com.

only did so for Mr. Rollins-Boyd. Tellingly, the adjusted rate for Boston is higher than the adjusted rate for Washington, DC.

Sec. Resp. at 7.

Using the CPI-U for Boston-Cambridge-Newton, MA-NH to calculate the appropriate hourly rate for Mr. Rollins-Boyd is perfectly appropriate because he is not employed by NVLSP; he is employed by the Boston, Massachusetts office of WilmerHale; and the costs and costs of living actually experienced by the Boston office of WilmerHale are actually experienced in Boston, not Washington, D.C.

III. IF THE COURT RULES THAT THE CPI-U FOR WASHINGTON D.C. IS INAPPROPRIATE FOR ATTORNEYS MILO AND RILEY, APPELLANT REQUESTS USE OF THE TWO CPI-US ATTACHED HERETO

For the reasons set forth above, Appellant urges the Court to rule that the Washington, D.C. CPI-U is appropriate for calculating the hourly rates for attorneys Milo and Riley under the *Parrott* principles and the facts relating to their costs and costs of living. However, in the alternative that the Court rules that the hourly rates for the time expended by attorneys Milo and Riley should be calculated using the CPI-U's for their primary places of residence, there is no need to reduce the amount of fees sought for the work of these attorneys by using the statutory base hourly rate of \$125, as the Secretary requests. The only reason that the Court used the statutory hourly rate of \$125 in *Parrott* was because the fee petitioner in that case did not support his application with evidence of the appropriate CPI-U. *Parrott v. Shulkin*, 2015 U.S. App. Vet. Claims LEXIS 1386, *4 (October 14, 2015).

Attached hereto as Exhibit C is the CPI-U applicable to the primary residence of attorney Milo. Attorney Milo's residence is in a suburb of Philadelphia, PA, which would make the relevant CPI-U the CPI-U for the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD statistical area, which is attached as Exhibit C. The hourly rate yielded by applying this CPI-U for inflation between March 1996 and April 2017 is \$191.68.

Therefore, the total amount of fees requested for the work of attorney Milo would equal \$3,929.44 (\$191.68 per hour multiplied by 20.5 hours). This would result in a reduction in the fees requested for Ms. Milo's time of \$209.31 (\$4,138.75 minus \$3,929.44).

Attached hereto as Exhibit D is the CPI-U applicable to the primary residence of attorney Riley during the time she expended the 0.4 hours billed in this case. At that time, attorney Riley's primary residence was in Charlotte, North Carolina. Charlotte, North Carolina does not have its own CPI-U. The appropriate CPI-U for Charlotte is for a city in the South region that would be classified as a class B/C city, with between 50,000 and 1,500,000 residents.⁶ That CPI-U is attached as Exhibit D. Using that CPI-U for the increase in the cost of living between March 1996 and April 2017 yields an hourly rate of \$187.50.

Therefore, the total amount of fees requested for the work of attorney Riley would equal \$75.00 (\$187.50 per hour multiplied by 0.4 hours). This would result in a reduction in the fees requested for Ms. Riley's time of \$5.76 (\$80.76 minus \$ 75.00).

⁶ See <https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm>.

The total award of fees and expenses initially requested by Appellant in this case is \$11,605.72. The total reduction in fees that would be called for if the hourly rates for attorneys Milo and Riley are reduced as described above is \$215.07 (\$209.31 plus \$5.76). Thus, in the alternative that the Court rules that the hourly rates for the time expended by attorneys Milo and Riley should be calculated using the CPI-Us for their primary places of residence, the Court should reduce the award sought from \$11,605.72 to \$11,390.65.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that the Court reject the arguments advanced in the Secretary's Response and award the full amount of attorneys' fees and expenses requested in Appellant's Application for Award of Reasonable Attorneys' Fees and Expenses pursuant to the EAJA.

Date: March 29, 2018

Respectfully submitted,

/s/ Katy S. Clemens

Katy S. Clemens

Barton F. Stichman

National Veterans Legal Services Program

1600 K Street, NW, Suite 500

Washington, DC 20006-2833

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Daniel W. Halston

David Rollins-Boyd

Wilmer Cutler Pickering Hale and Dorr LLP

60 State Street

Boston, MA 02109

(617) 526-6654

Counsel for Appellant

Exhibit A

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

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| Acting Secretary of Veterans Affairs, |) | |
| Appellee. |) | |

Declaration of Caitlin M. Milo

Caitlin M. Milo declares and states as follows:

1. I am a staff attorney at the National Veterans Legal Services Program (NVLSP)
and a member of the United States Court of Appeals for Veterans Claims (CAVC).
2. I reside in Swedesboro, New Jersey.
3. I performed my work on the case of John B. Speigner, Jr., while physically at my
residence in Swedesboro, New Jersey.

I certify under penalty of perjury that the foregoing is true and correct.

Date: March 29, 2018

Respectfully submitted,

/s/ Caitlin M. Milo

Caitlin M. Milo
National Veterans Legal Services Program
1600 K Street, NW, Suite 500
Washington, DC 20006-2833
(202) 621-5726

Exhibit B

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

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| ROBERT L. WILKIE, |) | |
| Acting Secretary of Veterans Affairs, |) | |
| Appellee. |) | |

Declaration of Barton F. Stichman

Barton F. Stichman declares and states as follows:

1. I am the executive director of the National Veterans Legal Services Program (NVLSP), a non-profit law firm and veterans' service organization. I have been executive director or co-executive director of NVLSP since its incorporation in 1980. I am also a member of the United States Court of Appeals for Veterans Claims (CAVC).
2. NVLSP has only one office, and it is located in Washington, D.C.
3. During all times relevant to the above-referenced case, attorney Caitlin M. Milo has been employed by NVLSP as a staff attorney. By special permission, attorney Milo is permitted to perform most of her work while physically in her residence in Swedesboro, New Jersey.
4. Attorney Milo works on a computer workstation that is owned and was issued to her by NVLSP.

5. This computer workstation functions by remotely accessing a corresponding physical computer tower with its own dedicated space in NVLSP's D.C. office.
6. The computer workstation, as well as the tower in the D.C. office, are hosted on a server located in NVLSP's D.C. office, all supported by IT staff and software located at NVLSP's D.C. office.
7. All of attorney Milo's computer filings, e-mail correspondence, and data storage are uploaded, transmitted, e-filed, and stored via the NVLSP-owned computer workstation through the tower and server located in NVLSP's D.C. office.
8. All of the other office equipment and supplies used by attorney Milo are owned by NVLSP, and the rates for all of this equipment and its maintenance, as well as regular monthly fees for internet access and for the hardware and software when applicable, are paid by NVLSP's D.C. office at Washington, D.C. area rates.
9. All of the administrative support provided in attorney Milo's cases is provided by NVLSP employees who work in NVLSP's D.C. office.
10. Attorney Milo's salary and employee benefits are all administered by NVLSP employees located in NVLSP's D.C. office.
11. Throughout attorney Milo's employment with NVLSP, her salary has been calculated based on years of experience and seniority, with adjustments for work performance, using the same salary scale that NVLSP uses for all of its attorneys, almost all of whom perform their work in NVLSP's D.C. office. Thus, the fact that Ms. Milo does most of her work for NVLSP while located in her residence in New Jersey has no effect on the magnitude of her salary.

12. Attorney Milo's work cellular telephone is owned by NVLSP's D.C. office.
13. Attorney Milo's direct work telephone number, as well as her extension, are hosted by the telephone exchange at NVLSP's D.C. office, and any telephone calls to these numbers or extensions are automatically forwarded to attorney Milo's work cellular telephone.
14. Attorney Milo's work cellular telephone, as well as the telephone exchange on which her telephone number is hosted, is maintained and serviced on the D.C. office's cellular and office telephone plans, paid at Washington, D.C. area rates.
15. All of attorney Milo's mail, including mail from clients, this Court, or the VA Office of the General Counsel, comes through NVLSP's D.C. office and is sorted, scanned, uploaded and/or sent via email to attorney Milo as necessary by administrative and legal support staff employed by and located at NVLSP's D.C. office.
16. Similarly, all mail sent from NVLSP, including from attorney Milo, is printed, copied, stamped, and mailed from administrative and legal support staff employed by and located at NVLSP's D.C. office.
17. In fact, one hundred percent of the supportive IT and clerical work at NVLSP, including in support of attorney Milo, is done by staff members in NVLSP's D.C. office.
18. Attorney Rory E. Riley worked for NVLSP in June 2016. She no longer works for NVLSP. Each of my statements here regarding attorney Milo, with the exception

of the location of her residence, was equally true of attorney Riley in June 2016,
when she performed work on this appeal.

I certify under penalty of perjury that the foregoing is true and correct.

Date: March 29, 2018

Respectfully submitted,

/s/ Barton F. Stichman

Barton F. Stichman

National Veterans Legal Services Program

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Exhibit C

Databases, Tables & Calculators by Subject

Change Output Options: From: 1996 To: 2018 GO

☐ include graphs ☐ include annual averages

[More Formatt](#)

Data extracted on: March 28, 2018 (2:50:46 PM)

CPI-All Urban Consumers (Current Series)

```
Series Id:      CUURS12BSA0,CUUSS12BSA0
Not Seasonally Adjusted
Series Title:   All items in Philadelphia-Camden-Wilmington, PA-NJ-DE-MD, all urban consumers, not seasonally adjusted
Area:          Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
Item:          All items
Base Period:   1982-84=100
```

Download: .xlsx[illegible]

Exhibit D

Databases, Tables & Calculators by Subject

Change Output Options:

From: 1996 ▼ To: 2018 ▼

☐ include graphs ☐ include annual averages

More Formatt

Data extracted on: March 28, 2018 (2:54:33 PM)

CPI-All Urban Consumers (Current Series)

Series Id: CUURN300SA0,CUUSN300SA0

Not Seasonally Adjusted

Series Title: All items in South - Size Class B/C, all urban consumers, not seasonally adjusted

Area: South - Size Class B/C

Item: All items

Base Period: DECEMBER 1996=100

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