

THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

CASE FILE NO.: 17-0477

ROSETTA MCKNIGHT

Appellant,

v.

ROBERT L. WILKIE,

**Secretary of Veterans Affairs,
Appellee.**

**APPELLANT'S APPLICATION
FOR AWARD OF
ATTORNEY'S FEES AND
EXPENSES**

Appellant, Mrs. McKnight, hereby applies to this honorable Court for an award of her attorney's fees and expenses in the amount of \$4,110.91. This application is made pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), and this Court's Rule 39.

I. PROCEDURAL HISTORY

On November 14, 2016 the Board of Veterans' Appeals (Board) entered a decision that denied Appellant's claim for entitlement to an effective date prior to January 21, 2009, for his award of service connection for posttraumatic stress disorder (PTSD), at the currently assigned 70% rating for that disability. In the same decision the Board also denied an earlier effective date prior to January 21, 2009, for Mr. McKnight's award of a total disability evaluation based upon individual unemployability (TDIU). A conference was held on June 8, 2017, and the appellant filed her opening brief on July 31, 2017. The Secretary filed his brief in November 2017 and Mrs. McKnight filed a reply brief.

The Court submitted this case to a panel; and Mrs. McKnight filed a motion for oral argument which was granted by the Court and scheduled for August 24, 2018. Subsequently, the parties entered into negotiations and agreed on a Joint Motion to Terminate the Appeal and a stipulated agreement regarding the claims for entitlement to an effective date prior to January 21, 2009 and for an award of service connection for posttraumatic stress disorder at a 70% rating. The parties also entered into a Joint Motion for Partial Remand for the claim of entitlement to an effective date prior to January 21, 2009, for the grant of a total disability rating based on individual unemployment due to service-connected disability (TDIU).

Both the Joint Motion to Terminate the Appeal, and the Joint Motion for Partial Remand were filed with the Court on August 17, 2018, and approved by the Court on August 28, 2018. The parties agreed that a remand was necessary because the Board acknowledged evidence suggesting that Mr. McKnight's PTSD may have prevented him from securing and maintaining substantially gainful employment during the newly established award period.

This application is timely under 28 U.S.C. § 2412(d)(1)(B).

II. AVERMENTS

Mrs. McKnight avers—

- (1) This matter is a civil action;
- (2) This action is against an agency of the United States, namely the Department of Veterans Affairs;

- (3) This matter is not in the nature of tort;
- (4) This matter sought judicial review of an agency action, namely the prior disposition of Mrs. McKnight's appeal to the Board of Veterans' Appeals;
- (5) This Court has jurisdiction over the underlying appeal under 38 U.S.C. § 7252;
- (6) Mrs. McKnight is a "party" to this action within the meaning of 28 U.S.C. § 2412(d)(2)(B);
- (7) Mrs. McKnight is a "prevailing party" in this matter within the meaning of 28 U.S.C. § 2412(d)(1)(a);
- (8) Mrs. McKnight is not the United States;
- (9) Mrs. McKnight is eligible to receive the award sought;
- (10) The position of the Secretary was not substantially justified; and
- (11) There are no special circumstances in this case which make such an award unjust.

Mrs. McKnight submits below an itemized statement of the fees and expenses for which she applies. The attached itemization shows the time counsel spent representing Mrs. McKnight on her appeal to the Court. Accordingly, Mrs. McKnight contends that she is entitled to an award of attorney's fees and expenses in this matter in the total amount itemized.

III. ARGUMENT

The assessment of the “jurisdictional adequacy” of a petition for EAJA fees is controlled by the factors summarized and applied in, e.g., *Cullens v. Gober*, 14 Vet. App. 234, 237 (2001) (*en banc*).

A. “Court”

This Court is a court authorized to award attorney’s fees and expenses as sought herein. 28 U.S.C. § 2412(d)(2)(F). This Court has exclusive jurisdiction of this matter. 38 U.S.C. § 7252(a).

B. Eligibility: “Party”

Mrs. McKnight is a party eligible to receive an award of fees and expenses because her net worth does not exceed \$2 million. See 28 U.S.C. § 2412(d)(2)(B). The declaration set forth in paragraph 6A in the Attorney-Client Fee Contract filed with the Court and served upon the Secretary on February 15, 2017, establishes this fact.

C. “Prevailing”

To be a “prevailing party” within the meaning of the statute, a party need only have succeeded “on any significant issue in litigation which achieve[d] some of the benefit . . . sought in bringing suit.” *Texas Teachers Association v. Garland Independent School District*, 489 U.S. 782, 791-92, 109A S.Ct. 1486, 1493, 103 L.Ed.2d 866, 876 (1989)).

The “prevailing party” requirement is satisfied by a remand. *Stillwell v. Brown*, 6 Vet. App. 291, 300 (1994). See *Employees of Motorola Ceramic Products v. United States*,

336 F.3d 1360 (Fed. Cir. 2003) (remand because of alleged error and court does not retain jurisdiction). This Court sharpened the criteria for “prevailingness” in *Sumner v. Principi*, 15 Vet. App. 256, 260-61 (2001) (*en banc*). “Prevailingness” now depends on the presence of either a finding by the Court or a concession by the Secretary of “administrative error.” Mrs. McKnight is a “prevailing party” entitled to an award of fees and expenses. For this assertion, Mrs. McKnight relies upon the following to satisfy the *Sumner* criteria:

Mrs. McKnight is a prevailing party because the judgement resulted in a "material alteration of the legal relationships of the parties." See *Robinson v. O'Rourke*, 891 F.3d 976 (Fed. Cir. 2018). In this case the Secretary stipulated that Mrs. McKnight would be entitled to an earlier effective date and a 70% rating for her husband's PTSD. See Joint motion to terminate appeal, at 5. Although the Secretary did not admit to any error, the legal relationship between the parties changed such that Mrs. McKnight is a prevailing party.

Mrs. McKnight asked for an effective date of January 22, 2008, for her husband's PTSD and the Secretary agreed to provide this exact relief. Furthermore, the statutes governing VA benefits do not allow an effective date to be assigned outside of the authority found in these laws. The Secretary, at the CAVC, cannot assign an earlier effective date unless there is some statute authorizing that effective date. Therefore, the Secretary, in his stipulated agreement, implicitly has agreed some error was committed by the Board in its decision. Therefore, Mrs. McKnight is a prevailing party.

Furthermore, the Joint Motion for Remand was predicated upon the VA granting an earlier effective date for Mr. McKnight's service connected PTSD. The remand for the TDIU issue necessitates further action by the Board based upon the implicit error agreed to in the stipulated agreement.

This remand was not predicated upon a change in law after the Board's decision or upon the need for the Board to consider a newly raised issue or new evidence discovered while the case was on appeal. See *Zuberi v. Nicholson*, 19 Vet. App. 541, 547 (2006).

D. The Position of the Secretary Was Not Substantially Justified

To defeat this application for fees and expenses the Secretary must show that the Government's position was "substantially justified." *Brewer v. American Battle Monument Commission*, 814 F.2d 1564, 1566 (Fed. Cir. 1987); *Stillwell v. Brown*, 6 Vet. App. 291, 301 (1994) (92-205), *appeal dismissed*, 46 F.3d 1111 (Fed. Cir. 1995) (94-7090). See 28 U.S.C. § 2412(d)(1)(B). The Government must show its position to have had a "reasonable basis both in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 563-68, 108B S.Ct. 2541, 2549-51, 101 L.Ed.2d. 503-506 (1988); *Beta Systems v. United States*, 866 F.2d 1404, 1406 (Fed. Cir. 1989).

"Substantial justification" is in the nature of an affirmative defense: If the Secretary wishes to have its benefit, he must carry the burden of proof on the issue. *Clemmons v. West*, 12 Vet. App. 245, 246 (1999) (97-2138), *appeal dismissed*, 206 F.3d

1401 (Fed. Cir. 2000) (99-7107), *rehrg denied*, __ F.3d __ (May 2, 2000). It is sufficient for Mrs. McKnight simply to aver this element.

E. Itemized Statement of Fees and Expenses

Annexed to this application are the required declaration of the lawyer, Exhibit A, and an itemized statement of the services rendered and the fees and expenses for which Mrs. McKnight seeks compensation, Exhibit B. See 28 U.S.C. § 2412(d)(1)(B).

Mrs. McKnight's counsel seeks compensation for attorney's fees and expenses incurred at the following rate and in the amounts shown¹ for representation in this Court:

Attorney & Administrative Services	Rate:	Hours:	Fee:	Totals:
Kenneth H. Dojaquez, Attorney	\$194.34	17.92	\$3,491.96	\$3,491.96
Paralegal/law clerk	\$150.00	2.5	\$375.00	\$375.00
Total for Services				\$3,856.96
Total for Expenses				\$253.95
Total for Application				\$4,110.91

F. Calculation of Rate of Fees

The fees in this case were calculated using the maximum hourly rate permitted under EAJA.

1. Lawyer's Standard Rates.

At the Court, Mr. Dojaquez' standard fee agreement states he shall be entitled to the greater of 20% of the gross amount of any past due benefits recovered for the appellant or an award of attorneys fees under EAJA. At the agency level, Mr. Dojaquez

¹ The chart summarizes hours, fees, and expenses. The chart only reflects hours of work performed for which the applicant is seeking compensation. Exhibit B is an itemized list of all fees and expenses—even those for which the applicant is not seeking compensation.

similarly limits his fee to a 20% contingency fee. Mr. Dojaquez' practice is limited to veteran benefits law; thus, Mr. Dojaquez considers his standard hourly rate to be commensurate with the "EAJA" rate in effect at the time Mr. Dojaquez provides services. However, based upon his geographical area, years of practice, and experience in veterans benefits law, a reasonable hourly rate for his services in other types of cases would be at least \$200.00.

2. Reasonableness of Lawyer's Rate.

Widely followed tabulations establish that the lawyer's hourly rate billed in this application is well below the prevailing rate. See the "*Laffey*² matrix" and a similar table attributed to the United States Attorney, both of which appeared in *Covington v. District of Columbia*, 839 F. Supp. 894, 904 (D.D.C.) in 1993; and see a similar version of the "*Laffey* matrix" from BARTON F. STICHMAN & RONALD B. ABRAMS, THE VETERANS BENEFITS MANUAL, p. 1634 (2009). The *Covington* and VBM versions of the "*Laffey* matrix" have been adjusted for inflation. One readily finds that the lawyer's rate for attorney fees in this case is well below the rates shown in the tabulations.

Also, in Exhibit A, the applicant's lawyer declares the billing rate utilized in Mrs. McKnight's case is less than the prevailing market rate for similar services performed by attorneys in Columbia, South Carolina.

3. Calculation of "EAJA Cap."

As the Court is aware, the statutory maximum rate for lawyer fees under EAJA is now \$125.00 per hour. 28 U.S.C. § 2412(d)(2)(A). It may be adjusted for inflation by

² *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983).

using the United States Department of Labor’s Consumer Price Index for All Urban Consumers (published by the Bureau of Labor Statistics) appropriate to the region, *Mannino v. West*, 12 Vet. App. 242, 244 (1999) (97-784), for the approximate mid-point of the representation. For this case, we used the date on which the Joint Motion for Remand was filed, August 17, 2018, as the mid-point of representation. *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994). Exhibit C. We used the August rate in our calculation. The rate-cap for the fees for lawyer services used in this application has been calculated as follows:

$$\begin{array}{lcl} \$125 \times \frac{\text{CPI-U [Southern Region, (August 2018)]}^3}{\text{CPI-U (Southern Region, March 1996)}} & = & \$125 \times \frac{236.942}{152.4} = \$194.34 \end{array}$$

4. Rate Applied.

Mr. Dojaquez utilized his staff of paralegals and law clerks to review records and draft legal documents. The rate for their work is \$150.00 per hour.

5. Billings Herein & “Billing Judgment.”

The lawyer has also reviewed the itemization to exercise “billing judgment” by determining whether the activity or expense might be an overhead expense or, for any other reason, not properly billable. In particular, the lawyer did not charge for work done on theories that either were not a basis for remand, or were related to issues that are not billable (e.g. inextricably intertwined). The lawyer also seeks to assure sound

³ The CPI-U is available at the Internet web site of the Bureau of Labor Statistics, <http://www.bls.gov/ro3/cpiso.htm>. The graph used for this application was found at: http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0300SA0,CUUS0300SA0

“billing judgment” by reducing the number of billable hours of work performed that might be considered excessive and by seeking less than the “EAJA-CPI rate.” However, the lawyer will be grateful to have brought to his attention any mistakes which might remain.

G. Expenses

All expenses are claimed at the actual cost incurred, with no “mark ups” or premiums.

H. Reasonableness of the Fee

Finally, it is necessary to show the reasonableness of the award sought on the basis of the 12 factors summarized in *Hensley v. Eckerhart*, 461 U.S. 424, 430 n. 3, 103A S.Ct. 1933, 76 L.Ed.2d 40 (1983):

1. *The time and labor* required is reported in the attached itemization.
2. *The novelty and difficulty of the questions.* This factor did not affect this engagement.
3. *The skill requisite to perform the legal service properly.* Veterans disability is a species of law of its own, requiring specialization, continuing education, and experience.
4. *The preclusion of employment by the attorney due to acceptance of the case.* This factor did not affect this engagement.
5. *The customary fee.* There are no lawyers known to the applicant and counsel who accept clients in veterans’ benefits matters on the basis of a “flat rate” or “customary fee.”

6. *Whether the fee is fixed or contingent.* The engagement agreement in this case is contingent upon sufficient success on the merits. Pursuant to the agreement, the attorney shall be entitled to an award of attorneys fees under EAJA.

7. *Time limitations imposed by the client or the circumstances.* This engagement was not affected by unusual urgency.

8. *The amount involved and the results obtained.* The amount for which the application is made is stated earlier. The amount of the veteran's benefits in controversy is not regarded by the applicant as relevant for the purposes of this application.

9. *The experience, reputation, and ability of the attorney.* The lawyer whose fees are sought is now in his seventh year in the practice of veteran's benefits law. He is a member and an active participant in the National Organization of Veterans' Advocates.

10. *The "undesirability" of the case.* This engagement was not affected by this factor.

11. *The nature and length of the professional relationship with the client.* Undersigned counsel has represented Mrs. McKnight since February 2017 through the filing of this appeal and will represent her on the remand to the Board.

12. *Awards in similar cases.* EAJA awards in veterans benefits cases are not collected in a counterpart of a jury award digest, but decisions of this Court reveal awards over \$20,000.00. *E.g., Perry v. West*, 11 Vet. App. 319 (1998) (\$20,430 award approved); *Ussery v. Brown*, 10 Vet. App. 51 (1997) (93-0696) (approved application for \$21,898).

I. Wrap-Up Application

Mrs. McKnight recognizes that the Secretary is privileged to oppose this application. Such a dispute may require that Mrs. McKnight file responsive pleadings. In those instances, Mrs. McKnight asks that she be permitted to supplement this application with a single, final “wrap-up” application which would include fees and expenses incurred after the date of this application.

IV. Prayer for Relief

Mrs. McKnight respectfully moves for an order awarding to appellant her attorney’s fees and expenses as set forth herein. This application for attorney’s fees and expenses is—

Respectfully submitted for Mrs. McKnight by:

/s/ Kenneth H. Dojaquez

Kenneth H. Dojaquez, Esq.
Attorney for Appellant
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Telephone: (803) 779-7599
Email: kenny@bluesteinattorneys.com

ANNEXED

Exhibit A Lawyer’s Declaration

Exhibit B Itemized List of Services, Fees, and Expenses

Exhibit C CPI-U Chart

Exhibit D.....*Laffey Matrix*

THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

CASE FILE NO.: 17-0477

ROSETTA MCKNIGHT,
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v.

ROBERT L. WILKIE,
Secretary of Veterans Affairs,
Appellee.

**ATTORNEY'S
DECLARATION
RE: ITEMIZATION OF
FEES AND EXPENSES**

Kenneth H. Dojaquez, attorney for the appellant, hereby declares and states:

1. I am the lawyer who represents the appellant named in this appeal. This declaration is based upon my personal knowledge as stated herein.

2. On February 15, 2017, the appellant signed an engagement agreement for me to represent her with a pending appeal before the Court. I have represented appellant in this matter continuously since that date. I entered my appearance in this case on February 6, 2017.

3. I worked on this case for a period of time before filing the Notice of Appeal in expectation that an appeal to the court would be filed, and that work is itemized in the attached statement of fees and expenses.

4. The engagement agreement in this case is contingent upon sufficient success on the merits. Pursuant to the agreement, I will be entitled to an award of attorney's fees under EAJA. I explained to Ms. Mrs. McKnight that, if we were successful at the Court, I would apply for my fees under EAJA.

5. To ensure my billing rates are reasonable, I consulted with other practitioners. Based upon my personal experience at a private firm in Columbia, South Carolina, and inquiry to other practitioners, the billing rates charged by me in Ms. Mrs. McKnight's case are consistent with or less than the prevailing market rates for similar services performed by attorneys in Columbia, South Carolina.

6. The attached itemization of fees and expenses is based on entries made contemporaneously with the work or expenditure. Fees for time are based on measured time or reasonably accurate estimates sometimes rounded to tenths of an hour. I have reviewed the itemized billing statement of fees and expenses to ensure they are correct. I am satisfied that the statement accurately reflects the work I performed. I know of no errors or misrepresentations in the statement. I have considered and eliminated all time that is excessive or redundant.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed in Columbia, South Carolina, this the following date: September 19, 2018

/s/ Kenneth H. Dojaquez

Kenneth H. Dojaquez, Esq.
Attorney for Appellant
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Email: kenny@bluesteinattorneys.com

Appellant Rosetta McKnight CAVC (17-477)

	Start	End	Time	Hours	
2016					
18-Nov	15:00	15:30	0:30	0.50	Review BVA decision for possible issues to appeal
2017					
15-Feb	15:00	15:40	0:40	0.67	Client in office to review appeal and sign contract
1-May	15:00	16:44	1:44	1.73	RBA review
2-May	11:40	12:25	0:45	0.75	
8-May	13:40	14:07	0:27	0.45	
	14:20	15:24	1:04	1.07	Review file; outline arguments; conduct legal research on issues.
	16:02	16:27	0:25	0.42	
9-May	12:05	13:02	0:57	0.95	Draft R33 memo: Argument 1
	13:25	13:41	0:16	0.27	Draft R33 memo: Argument 1
	13:41	14:24	0:43	0.72	Draft R33 memo: Argument 2
	14:49	15:36	0:47	0.78	Draft R33 memo: Argument 2
	15:36	16:03	0:27	0.45	Draft R33 memo: edit and revise
8-Jun	13:35	13:56	0:21	0.35	Prep for R33 confernce call
	15:30	15:42	0:12	0.22	Conduct R33 conference call
31-Jul	11:35	12:10	0:35	0.58	Review file and outline arguments. Conduct additional legal research based on pre-briefing conference
	13:05	13:16	0:11	0.18	
	14:20	15:02	0:42	0.70	Draft brief: issues and statement of the case
	15:02	15:45	0:43	0.72	Draft brief: arguments 1 & 2
	15:45	16:10	0:25	0.42	Draft brief: edit and revise
	16:10	16:35	0:25	0.42	Draft brief: TOC/TOA
2018					
17-Jan	11:25	11:38	0:13	0.22	Review Secretary brief and outline reply arguments
	11:59	13:15	1:16	1.27	
	13:15	13:30	0:15	0.25	Draft reply brief: Arguments 1&2
	14:07	15:07	1:00	1.00	Draft reply brief: Argument 2; legal research
	15:07	15:31	0:24	0.40	Draft reply brief: Arguments 3-5
	15:31	15:41	0:10	0.17	Draft reply brief: edit and revise
	15:41	16:03	0:22	0.37	Draft reply brief: TOC/TOA
20-Jan			0:00	0.50	Estimate: paralegal review of ROP
25-Apr	12:30	12:50	0:20	0.33	Draft motion for oral argument
30-Jul			0:00	0.25	Call with client to discuss JMR offer from Secretary.
16-Aug			0:00	0.50	Emails and phone calls to discuss settlement offer
17-Aug			0:00	0.25	Review settlement and JMR drafts

Appellant Rosetta McKnight CAVC (17-477)

4-Sep	16:02	16:39	0:37	0.62	Lawclerk: Draft EAJA application JMPR portion
18-Sep	10:35	11:14	0:39	0.65	Lawclerk: Draft EAJA application JMPR portion
	14:07	14:51	0:44	0.73	Lawclerk: Draft EAJA application JMTA portion
19-Sep	15:00	15:35	0:35	0.58333	Review EAJA Application
				17.92	Total Hours (Attorney)
				194.34	Rate
				3481.96	Total Fee (Attorney)
				2.50	Total Hours (Paralegal)
				150.00	Rate
				375.00	Total Fee (Paralegal)
				3856.96	Total Fee
Expenses					
				50.00	CAVC filing fee
				200.00	Fee to cancel flight to oral argument
				3.95	Postage

Start and end times are depicted as in the 24 hr clock

Time is depicted as hour:minutes

Hours is depicted as fractions of hours (e.g. 1.25 is one hour 15 minutes)

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CPI-All Urban Consumers (Current Series)

Series Id: CUUR0300SA0,CUUS0300SA0
Not Seasonally Adjusted
Series Title: All items in South urban, all urban consumers, not seasonally adjusted
Area: South
Item: All items
Base Period: 1982-84=100

Download: xlsx

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2008	204.510	205.060	206.676	208.085	210.006	212.324	213.304	212.387	212.650	210.108	205.559	203.501	208.681	207.777	209.585
2009	204.288	205.343	206.001	206.657	207.265	209.343	208.819	209.000	208.912	209.292	209.738	209.476	207.845	206.483	209.206
2010	210.056	210.020	211.216	211.528	211.423	211.232	210.988	211.308	211.775	212.026	211.996	212.488	211.338	210.913	211.764
2011	213.589	214.735	217.214	218.820	219.820	219.318	219.682	220.471	220.371	219.969	219.961	219.469	218.618	217.249	219.987
2012	220.497	221.802	223.314	224.275	223.356	223.004	222.667	223.919	225.052	224.504	223.404	223.109	223.242	222.708	223.776
2013	223.933	225.874	226.628	226.202	226.289	227.148	227.548	227.837	227.876	227.420	226.811	227.082	226.721	226.012	227.429
2014	227.673	228.664	230.095	231.346	231.762	232.269	232.013	231.611	231.762	231.131	229.845	228.451	230.552	230.302	230.802
2015	226.855	227.944	229.337	229.957	230.886	232.026	231.719	231.260	230.913	230.860	230.422	229.581	230.147	229.501	230.793
2016	229.469	229.646	230.977	231.975	232.906	233.838	233.292	233.561	234.069	234.337	234.029	234.204	232.692	231.469	233.915
2017	235.492	236.052	236.154	236.728	236.774	237.346	236.942	237.892	239.649	239.067	238.861	238.512	237.456	236.424	238.487
2018	239.772	241.123	241.595	242.486	243.279	243.770	243.776							242.004	

- TOOLS

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USAO ATTORNEY'S FEES MATRIX — 2015-2018

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	2017-18
31+ years	568	581	602
21-30 years	530	543	563
16-20 years	504	516	536
11-15 years	455	465	483
8-10 years	386	395	410
6-7 years	332	339	352
4-5 years	325	332	346
2-3 years	315	322	334
Less than 2 years	284	291	302
Paralegals & Law Clerks	154	157	164

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-