

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

| | | |
|--------------------|---|------------------|
| MARIO I. HERNANDEZ |) | |
| Appellant, |) | |
| |) | |
| v. |) | CAVC No. 17-2310 |
| |) | EAJA |
| |) | |
| ROBERT L. WILKIE, |) | |
| 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), and the Court's Rule 39, Appellant, through counsel, seeks a total fee in the amount of **\$9,065.90**.

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) ("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).

Most recently, this Court in *Blue v. Wilkie*, 30 Vet.App. 61 (2018), laid out the following three-part test relating to when an appellant is considered a prevailing party under the EAJA:

An appellant who secures a remand to an administrative agency is a prevailing party under the EAJA if (1) the remand was necessitated by or predicated upon administrative error, (2) the remanding court did not retain jurisdiction, and (3) the language in the remand order clearly called for further agency proceedings, which leaves the possibility of attaining a favorable merits determination.

Id. at 67, citing *Dover v. McDonald*, 818 F.3d 1316 (Fed. Cir. 2016).

The Court vacated and remanded the Board's June 22, 2017 decision based upon the Board's failure to provide an adequate statement of reasons or bases. See pages 1-9 of the Memorandum Decision. The mandate was issued on May 7, 2019. Based upon the foregoing, and because the three-part test promulgated in *Blue* is satisfied, Appellant 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. Hernandez 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. Hernandez 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 was not reasonable, either in law or in fact, and accordingly the Secretary's position was not substantially justified at the administrative or litigation stage in this case. There thus is nothing substantially justified in the Board's failure to provide an

adequate statement of reasons or bases. Moreover, there is no evidence that special circumstances exist in Appellant's case that would make an award of reasonable fees and expenses unjust. 28 U.S.C. § 2412(d)(1)(A).

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

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

Seven attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Dvora Walker, Nicholas Phinney, Dana Weiner, Barbara Cook, Jenna Zellmer, Danielle M. Gorini, and Zachary Stolz.¹ Attorney Dvora

¹"There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the same work and are being compensated for the distinct contribution of each lawyer." *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1301 (11th Cir. 1988); *see also Baldridge v. Nicholson*, 19 Vet.App. 227, 237-38 (2005)("the fees sought must be 'based on the distinct contribution of each individual counsel.'"). "The use in involved litigation of a team of attorneys who divide up 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*

Walker graduated from University of Connecticut Law School in 2016 and the *Laffey* Matrix establishes that \$340.00 is the prevailing market rate for an attorney with her experience.² Nicholas Phinney graduated from Roger Williams University Law School in 2007 and the *Laffey* Matrix establishes that \$491.00 is the prevailing market rate for an attorney with his experience. Dana Weiner graduated from Roger Williams University Law School in 2015 and the *Laffey* Matrix establishes that \$351.00 is the prevailing market rate for an attorney with her experience. Barbara Cook graduated from University of Michigan Law School in

Baldridge, 19 Vet.App. at 237 (“An application for fees under EAJA where multiple attorneys are involved must also explain the role of each lawyer in the litigation and the tasks assigned to each, thereby describing the distinct contribution of each counsel.”). The Exhibit A in this case is separated into two documents as our firm is transitioning to a new time keeping program beginning October 1, 2018.

² The US Attorney’s Office maintains a matrix, known as the Laffey Matrix, of prevailing market rates for attorneys by the 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 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).

1977 and the *Laffey* Matrix establishes that \$613.00 is the prevailing market rate for an attorney with her experience. Jenna Zellmer graduated from Boston University Law School in 2013 and the *Laffey* Matrix establishes that \$358.00 is the prevailing market rate for an attorney with her experience. Danielle Gorini graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$491.00 is the prevailing market rate for an attorney with her experience. Zachary Stolz graduated from the University of Kansas School of Law in 2005 and the *Laffey* Matrix establishes that \$491.00 is the prevailing market rate for an attorney with his experience.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$204.12 per hour for Ms. Walker, Mr. Phinney, Ms. Weiner, Ms. Zellmer, Ms. Gorini, and Mr. Stolz for representation services before the Court.³ This rate per hour, multiplied by the number of hours billed for these six attorneys (41.90) results in a total attorney's fee amount of \$8,552.57.

³ 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. See *Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date of the EAJA rate), to May 2018 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).

Appellant seeks attorney's fees at the rate of \$193.05 per hour for Ms. Cook's representation services before the Court.⁴ This rate per hour, multiplied by the number of hours billed for Ms. Cook (2.40) results in a total attorney's fee amount of \$463.33.

In addition, Appellant seeks reimbursement for the following expense:

Filing Fee: \$50.00

Based upon the foregoing, the total fee sought is **\$9,065.90.**

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 the Midwest and using the starting point as determined by the Consumer Price Index -U for Cincinnati. *See Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to May 2018 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).

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,
Mario I. Hernandez
By His Attorneys,
CHISHOLM CHISHOLM & KILPATRICK
/s/Zachary M. Stolz
One Turks Head Place, Ste. 1100
Providence, Rhode Island 02903
(401) 331-6300
Fax: (401) 421-3185

Exhibit A

| | | <u>Hours</u> |
|---------------|--|--------------|
| 7/6/2017 NP | Reviewed BVA decision and made a recommendation for an appeal to Court. | 0.30 |
| 7/25/2017 DMG | Reviewed file and appeal documents. Filed Notice of Appeal, Notice of Appearance for Zachary Stolz as lead counsel, and Fee Agreement with the Court. Received, reviewed, and saved Court confirmation email to the file. Updated case file. | 0.20 |
| 7/31/2017 DMG | Reviewed emails from Court with docketed appeal documents. Posted emails to the file. Checked Court docket sheet to ensure Notice of Appeal, Notice of Appearance for Zachary Stolz as lead counsel, and Fee Agreement were properly docketed. Updated case information and case file. | 0.20 |
| 8/7/2017 DNW | Prepared and filed notice of appearance. Updated file. | 0.10 |
| 8/8/2017 DNW | Received and reviewed BVA decision certificate of service; updated case file. | 0.10 |
| 8/8/2017 DNW | Received and reviewed Court's notice copy of BVA decision was uploaded to docket; reviewed copy; updated file. | 0.10 |
| 9/22/2017 DNW | Received and reviewed OGC's notice of appearance; updated file. | 0.10 |
| 9/22/2017 DNW | Received and reviewed notice from Court of RBA filing; reviewed notice for accuracy; updated case file. | 0.10 |

Exhibit A

| | | <u>Hours</u> |
|----------------|---|--------------|
| 9/28/2017 DNW | Received and reviewed notice RBA was received and added to file; updated case file; calculated 19-day dispute deadline; updated file. | 0.10 |
| 9/28/2017 NP | Reviewed RBA to determine need for dispute; emailed VA atty. re: possible dispute | 1.40 |
| 10/5/2017 NP | Drafted motion to dispute RBA | 0.10 |
| 10/11/2017 NP | Finalized & filed appearance & motion to dispute RBA | 0.10 |
| 10/24/2017 NP | Received & reviewed order staying case; updated client file | 0.10 |
| 11/8/2017 NP | Received & reviewed VA's latest response to RBA dispute; updated client file | 0.10 |
| 11/8/2017 DNW | Received OGC's notice of appearance; reviewed for accuracy; saved to file. | 0.10 |
| 11/28/2017 NP | Received & reviewed VA's latest response to RBA dispute; updated client file | 0.10 |
| 11/28/2017 DNW | Received notice of receipt of corrected RBA; updated case file; reviewed RBA to ensure RBA was received for correct client. | 0.10 |
| 11/28/2017 NP | Reviewed amended RBA; emailed VA atty. re: RBA | 0.30 |
| 11/29/2017 NP | Email from VA atty. re: RBA; reviewed RBA per email | 0.30 |
| 12/1/2017 NP | Reviewed notes to prepare to view VBMS & CAPRI files | 0.10 |

Exhibit A

| | | <u>Hours</u> |
|----------------|---|--------------|
| 12/5/2017 NP | Viewed client's VBMS & CAPRI files; emialed VA atty. re: RBA | 0.20 |
| 12/12/2017 DNW | Received and reviewed notice of resolving of RBA dispute. Saved document to file and reviewed for accuracy. Updated file. | 0.10 |
| 12/26/2017 DNW | Received OGC's notice of appearance; reviewed for accuracy; saved to file; updated case file. | 0.10 |
| 1/4/2018 DNW | Received notice of file brief; reviewed for accuracy; updated file. Calculated brief due date and updated case calendar. | 0.10 |
| 1/4/2018 DNW | Prepared letter to client re: status of appeal. Updated case file. | 0.10 |
| 2/5/2018 DNW | Received PBC scheduling order. Reviewed for accuracy. Updated file. Updated case calendar with PBC date and time. Calculated memo due date and updated case calendar. | 0.10 |
| 2/15/2018 DNW | Prepared and filed rule 33 certificate of service. Updated file. | 0.10 |
| 2/15/2018 DNW | E-mailed PBC memo to CLS and OGC. Updated file. | 0.10 |
| 2/15/2018 DNW | Finalized PBC memo. | 0.20 |
| 2/15/2018 DNW | Reviewed RBA and drafted PBC memo. | 3.00 |
| 3/1/2018 DNW | Called client and discussed PBC outcome; note to file re: conversation. | 0.10 |
| 3/1/2018 DNW | Received and reviewed e-mail from OGC re: contact info. for PBC. Updated file. | 0.10 |

Exhibit A

| | | | <u>Hours</u> |
|-----------|-----|--|--------------|
| 3/1/2018 | DNW | Reviewed memo in preparation for PBC. | 0.30 |
| 3/1/2018 | DNW | Participated in PBC. Note to file re: OGC's position. Updated file. Calculated brief due date and updated case calendar. | 0.30 |
| 5/1/2018 | DNW | Began to draft opening brief - argument section. | 0.50 |
| 5/2/2018 | DNW | Continued to draft argument section of opening brief. | 2.90 |
| 5/3/2018 | DNW | Drafted opening brief argument section. | 1.80 |
| 5/3/2018 | DW | Reviewed opening brief for proofreading purposes. Checked cites to record and authority, and made edits. | 1.80 |
| 5/3/2018 | DNW | Drafted remainder of opening brief - statement of case and remaining sections. Updated file. | 2.10 |
| 5/3/2018 | DNW | Drafted remainder of argument section of brief. | 2.30 |
| 5/15/2018 | DNW | Reviewed and implemented suggested edits to opening brief. Updated file. | 2.00 |
| 5/16/2018 | BJC | Review draft opening and suggested edits to fact section | 0.40 |
| 5/16/2018 | BJC | Reviewed argument section, suggest adding GAF argument, edit for clarity and space without losing arguments | 0.40 |
| 5/16/2018 | DNW | Reviewed and implemented suggested edits to opening brief. Updated file. | 0.30 |
| 5/17/2018 | DNW | Finalized and filed opening brief. Updated case file. | 2.90 |

Exhibit A

| | | | <u>Hours</u> |
|-----------|-----|---|--------------|
| 6/25/2018 | DNW | Telephone call with client; note to file re: conversation. | 0.10 |
| 6/25/2018 | DNW | Received and reviewed message from client. Updated file. | 0.10 |
| 7/16/2018 | DNW | Received notice OGC filed brief; reviewed notice for accuracy; updated file. Calculated reply brief due date and updated case calendar. | 0.10 |
| 7/16/2018 | DNW | Reviewed OGC's brief to ensure there were no issues requiring special attention; updated file. | 0.10 |
| 7/23/2018 | DNW | Telephone call with client to discuss OGC's brief and status of case. Updated file. | 0.10 |
| 7/23/2018 | DNW | Listened to voice mail from client; updated file. | 0.10 |
| 8/31/2018 | DNW | Reviewed OGC's brief with opening brief and made notes for reply brief drafting. Updated file. | 0.70 |
| 9/4/2018 | JZ | Reviewed opening brief, case file notes, and Aee brief. Reviewed Dana's reply and made edits and suggestions to strengthen. | 0.80 |
| 9/4/2018 | DNW | Began drafting argument 4 of reply brief. | 1.10 |
| 9/4/2018 | DNW | Worked on reply brief arguments 1-3. | 1.20 |
| 9/4/2018 | DNW | Completed reply brief draft. | 2.70 |
| 9/5/2018 | DNW | Reviewed and implemented suggested edits to reply brief. Updated file. | 0.20 |
| 9/9/2018 | BJC | start to review reply brief and suggested initial edits | 0.10 |

Exhibit A

| | | <u>Hours</u> |
|-----------|--|--------------|
| 9/10/2018 | BJC Continued to review and suggest edits to draft reply - suggest to add more to standardless, reviewed McGrath and check C & P | 1.50 |
| 9/13/2018 | DNW Reviewed suggested edits to reply brief. Reviewed record to consider implementing suggestions. Added impaired impulse control argument to reply. Researched law re: marginal employment. | 0.80 |
| 9/13/2018 | DNW Finalized and filed reply brief. Updated file. | 1.10 |
| 9/13/2018 | DNW Worked on revising reply brief | 3.00 |
| 9/28/2018 | DNW Received notice of filing of ROP; reviewed notice and updated file. Calculated ROP response due date and updated case calendar. | 0.10 |
| 9/28/2018 | DNW Prepared and filed ROP response letter. Updated file. | 0.10 |
| 9/28/2018 | DNW Reviewed ROP with briefs for accuracy. Updated file. | 0.20 |

| | |
|----------------|------------------|
| | <u>Amount</u> |
| | 40.60 \$8,260.66 |
| Expenses | |
| Filing Fee | 50.00 |
| Total Expenses | \$50.00 |
| | <u>Amount</u> |
| | 40.60 \$8,310.66 |

Exhibit A

Timekeeper Summary

| <u>Name</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|--------------------|--------------|-------------|---------------|
| Barbara J. Cook | 2.40 | 193.05 | \$463.33 |
| Dana Weiner | 32.10 | 204.12 | \$6,552.20 |
| Danielle M. Gorini | 0.40 | 204.12 | \$81.64 |
| Dvora Walker | 1.80 | 204.12 | \$367.42 |
| Jenna Zellmer | 0.80 | 204.12 | \$163.30 |
| Nicholas Phinney | 3.10 | 204.12 | \$632.77 |

Exhibit A

Time from 10/1/2018 to 5/9/2019

Case No. 251804

Client: Hernandez, Mr. Mario I.

| | | | <u>Hours</u> |
|-----------|----------|--|--------------|
| 10/3/2018 | DWEINER | Received notice of judge assignment; reviewed and updated file. | 0.10 |
| 1/31/2019 | DWEINER | Telephone call with client re: status of appeal. Updated file. | 0.10 |
| 2/13/2019 | DWEINER | Telephone call with client re: issuance of memorandum decision; updated file. | 0.10 |
| 2/13/2019 | DWEINER | Received and reviewed notice of issuance of favorable memorandum decision; updated file. | 0.10 |
| 2/13/2019 | DWEINER | Reviewed favorable memorandum decision. Prepared notes to file re: outcome of appeal in preparation for discussing case with client. Updated file. | 0.30 |
| 2/14/2019 | ZACH | Reviewed Court decision, pleadings, and notes in case. Prepared letter to client concerning Court's decision. Ensured case file was updated with necessary letters, pleadings, and correspondence so that client could be properly informed of case progress, disposition, and next steps. | 0.70 |
| 3/7/2019 | DWEINER | Received judgment; reviewed and updated file. | 0.10 |
| 3/8/2019 | ZACH | Prepared letter to client concerning entry of Court's judgment. | 0.30 |
| 5/1/2019 | DWEINER | Telephone call with client re: case status; updated file. | 0.10 |
| 5/1/2019 | DWEINER | Telephone call to client re: status of appeal at cell phone number; left voice mail; updated file to note attempted contact. | 0.10 |
| 5/1/2019 | DWEINER | Telephone call to client re: status of appeal at home phone number; left voice mail; updated file to note attempted contact. | 0.10 |
| 5/8/2019 | DWEINER | Received mandate; reviewed and updated file. | 0.10 |
| 5/9/2019 | DANIELLE | Prepared and e filed Notice of Appearance. Received, reviewed, and saved Court confirmation email. Checked docket sheet to ensure proper filing. Updated case file. | 0.20 |
| 5/9/2019 | DANIELLE | Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review | 1.00 |
| 5/9/2019 | ZACH | Reviewed EAJA Application for proofreading purposes and to ensure billing accuracy | 0.30 |

Timekeeper Summary

| <u>Staff</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|-----------------|--------------|------------------|------------------|
| DANIELLE | 1.2 | \$ 204.12 | \$ 244.94 |
| DWEINER | 1.2 | \$ 204.12 | \$ 244.94 |
| ZACH | 1.3 | \$ 204.12 | \$ 265.36 |
| | 3.7 | | \$ 755.24 |

USAO ATTORNEY'S FEES MATRIX — 2015-2019

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 | 2018-19 |
|-------------------------|---------|---------|---------|---------|
| 31+ years | 568 | 581 | 602 | 613 |
| 21-30 years | 530 | 543 | 563 | 572 |
| 16-20 years | 504 | 516 | 536 | 544 |
| 11-15 years | 455 | 465 | 483 | 491 |
| 8-10 years | 386 | 395 | 410 | 417 |
| 6-7 years | 332 | 339 | 352 | 358 |
| 4-5 years | 325 | 332 | 346 | 351 |
| 2-3 years | 315 | 322 | 334 | 340 |
| Less than 2 years | 284 | 291 | 302 | 307 |
| Paralegals & Law Clerks | 154 | 157 | 164 | 166 |

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*, 142 F. Supp. 3d 1 (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
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have relied on the USAO's *Laffey* 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. Holzmänn*, 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.*, 188 F. Supp. 3d 1 (D.D.C. 2016); *Prunty v. Vivendi*, 195 F. Supp. 3d 107 (D.D.C. 2016); *CREW v. U.S. Dep't of Justice*, 142 F. Supp. 3d 1 (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). Since initial publication of the instant USAO Matrix in 2015, numerous courts similarly have employed the USAO Matrix rather than the *Salazar* Matrix for fees incurred since 2015. E.g., *Electronic Privacy Information Center v. United States Drug Enforcement Agency*, 266 F. Supp. 3d 162, 171 (D.D.C. 2017) ("After examining the case law and the supporting evidence offered by both parties, the Court is persuaded that the updated USAO matrix, which covers billing rates from 2015 to 2017, is the most suitable choice here.") (requiring recalculation of fees that applicant had computed according to *Salazar* Matrix); *Clemente v. FBI*, No. 08-1252 (BJR) (D.D.C. Mar. 24, 2017), 2017 WL 3669617, at *5 (applying USAO Matrix, as it is "based on much more current data than the *Salazar* Matrix"); *Gatore v. United States Dep't of Homeland Security*, 286 F. Supp. 3d 25, 37 (D.D.C. 2017) (although plaintiff had submitted a "'great deal of evidence regarding [the] prevailing market rates for complex federal litigation' to demonstrate that its requested [*Salazar*] rates are entitled to a presumption of reasonableness, . . . the Court nonetheless concludes that the defendant has rebutted that presumption and shown that the current USAO Matrix is the more accurate matrix for estimating the prevailing rates for complex federal litigation in this District"); *DL v. District of Columbia*, 267 F. Supp. 3d 55, 70 (D.D.C. 2017) ("the USAO Matrix ha[s] more indicia of reliability and more accurately represents prevailing market rates" than the *Salazar* Matrix). 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. The United States recently submitted an appellate brief that further explains the reliability of the USAO Matrix vis-à-vis the *Salazar* matrix. See Br. for the United States as *Amicus Curiae* Supporting Appellees, *DL v. District of Columbia*, No. 18-7004 (D.C. Cir. filed July 20, 2018).