

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

EDDIE RAY	)	
Appellant,	)	
	)	
v.	)	CAVC No. 17-781
	)	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 **\$27,276.68**.

The basis for the application is as follows:

**Grounds for an Award**

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

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

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

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

A. *The Appellant Is a Prevailing Party*

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

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

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

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

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 Appellant in the instant matter is a prevailing party. After oral argument, in a precedential decision, the Court set aside and remanded the Board's February 15, 2017 decision based upon the Board's failure to provide an adequate statement of reasons or bases. See pages 1-25 of the Decision. The mandate was issued on June 11, 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. Ray 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. Ray is a person eligible to receive an award under the EAJA.

*C. The Position of the Secretary Was Not Substantially Justified*

In *White v. Nicholson*, 412 F.3d 1314 (Fed. Cir. 2004) the Federal Circuit applied the totality of the circumstances test and noted that "EAJA requires that the record must supply the evidence of the Government's substantial justification." 412 F.3d at 1316. The Secretary's position during proceedings before the Agency and in Court was not reasonable, either in law or in fact, and accordingly the

Secretary's position was not substantially justified at either the administrative or litigation stage in this case. There thus is nothing substantially justified in the Board's failure to provide an adequate statement of reasons or bases. Moreover, there is no evidence that special circumstances exist in Appellant's case that would make an award of reasonable fees and expenses unjust. 28 U.S.C. § 2412(d)(1)(A).

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

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

Ten attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Nicholas Phinney, Danielle M. Gorini, Jenna Zellmer, April Donahower, Robert Chisholm, Lindy Nash, Megan Ellis, Christina Collins, Barbara Cook, and Zachary Stolz.<sup>1</sup> Attorney Nicholas Phinney graduated from

---

<sup>1</sup>"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

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.<sup>2</sup>

Danielle Gorini graduated from Roger Williams University Law School in 2005

---

Cir. 1988); *see also* *Baldrige v. Nicholson*, 19 Vet.App. 227, 237-38 (2005) (“the fees sought must be ‘based on the distinct contribution of each individual counsel.’”). “The use in involved litigation of a team of attorneys who divide up the work is common today for both plaintiff and defense work.” *Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) *holding modified by* *Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). “Careful preparation often requires collaboration and rehearsal[.]” *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998). As demonstrated in Exhibit A, each attorney involved in the present case provided a distinct, and non-duplicative contribution to the success of the appeal. *See Baldrige*, 19 Vet.App. at 237 (“An application for fees under EAJA where multiple attorneys are involved must also explain the role of each lawyer in the litigation and the tasks assigned to each, thereby describing the distinct contribution of each counsel.”). 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.

<sup>2</sup>The U.S. Attorney’s Office maintains a matrix, known as the Laffey Matrix, of prevailing market rates for attorneys by years of practice, taking into account annual price increases, pursuant to *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff’d in part by* 746 F.2d4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021, 105 S. Ct. 3488 (1985). This Court has approved the use of the Laffey Matrix for determining the prevailing market rate for EAJA fees. *See, e.g., Wilson v. Principi*, 16 Vet. App. 509, 213 (2002) (finding the Laffey Matrix a “reliable indicator of fees...particularly as to cases involving fees to be paid by government entities or determined under fee-shifting statutes”), *vacated on other grounds by* 391 F.3d 1203 (Fed. Cir. 2004); *see also* *Sandoval*, 9 Vet. App. at 181 (using the Laffey Matrix as an indicator of prevailing market rate and holding that once a prevailing market rate is established, the government has the burden of producing evidence to show that the rate is erroneous.) *See* Exhibit B (Laffey Matrix).

and the *Laffey* Matrix establishes that \$491.00 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. April Donahower graduated from Temple University Law School in 2013 and the *Laffey* Matrix establishes that \$351.00 is the prevailing market rate for an attorney with her experience. Robert Chisholm graduated from Law School in 1988 and the *Laffey* Matrix establishes that \$613.00 is the prevailing market rate for an attorney with his experience. Lindy Nash graduated from Suffolk University Law School in 2015 and the *Laffey* Matrix establishes that \$351.00 is the prevailing market rate for an attorney with her experience. Megan Ellis graduated from Boston College Law School in 2014 and the *Laffey* Matrix establishes that \$351.00 is the prevailing market rate for an attorney with her experience. Christina Collins graduated from Harvard University Law School in 1999 and the *Laffey* Matrix establishes that \$544.00 is the prevailing market rate for an attorney with her experience. Barbara Cook graduated from University of Michigan Law School in 1977 and the *Laffey* Matrix establishes that \$613.00 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 \$200.08 per hour for Mr. Phinney, Ms. Gorini, Ms. Zellmer, Ms. Donahower, Mr. Chisholm, Ms. Nash, Ms. Ellis, and Mr. Stolz for representation services before the Court.<sup>3</sup> This rate per hour, multiplied by the number of hours billed for these eight attorneys (73.30) results in a total attorney's fee amount of \$14,665.94.

Appellant seeks attorney's fees at the rate of \$193.83 per hour for Ms. Cook's representation services before the Court.<sup>4</sup> This rate per hour, multiplied by the number of hours billed for Ms. Cook (54.50) results in a total attorney's fee

---

<sup>3</sup>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 for the EAJA rate), to October 2017 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).

<sup>4</sup> This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Cincinnati. *See Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to October 2017 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).



amount of \$10,563.80.

Appellant seeks attorney's fees at the rate of \$197.95 per hour for Ms. Collins' representation services before the Court.<sup>5</sup> This rate per hour, multiplied by the number of hours billed for Ms. Collins (2.20) results in a total attorney's fee amount of \$435.49.

In addition, Appellant seeks reimbursement for the following expenses:

Airfare to and from Washington DC – BC: \$599.98

Airfare to and from Washington DC – AD: \$277.40

Hotel in Washington DC – BC: \$325.94

Hotel in Washington DC – AD: \$363.13

Metro in Washington DC - AD: \$5.00

Parking at the Providence Airport – AD: \$40.00

Based upon all of the foregoing, Appellant seeks a total fee and expense in the amount of **\$27,276.68.**

---

<sup>5</sup> 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 Washington-Arlington-Alexandria, DC-MD-VA-WV. *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 October 2017 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (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,  
Eddie Ray  
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>
2/22/2017 NP	Reviewed Board decision and recommended case for appeal.	0.60
3/23/2017 AD	Received emails from court with BVA decision transmittal and copy of decision; reviewed documents for accuracy and saved to client file; updated client calendar	0.10
3/23/2017 AD	Received case assignment; prepared and e-filed notice of appearance; reviewed docket for procedural status; updated client file	0.20
3/24/2017 ME	Prepared and filed notice of appearance; updated file	0.10
3/27/2017 AD	Received telephone call from client; updated client file	0.10
4/6/2017 AD	Received email from court with OGC notice of appearance; reviewed notice for accuracy and saved to client file; updated casefile	0.10
5/9/2017 AD	Received email from court with RBA certificate of service; reviewed certificate for accuracy and saved to client's file; updated client calendar	0.10
5/15/2017 NP	Reviewed RBA to determine need for dispute	1.70
5/19/2017 AD	Provided status update to client	0.10
6/6/2017 AD	Preparation of PBC Memo	2.20
6/7/2017 AD	Continued drafting PBC memo	1.70
6/14/2017 AD	Edited memo	1.20

## Exhibit A

			<u>Hours</u>
6/19/2017 AD	Prepared letter advising client of acceptance of RBA; updated client calendar		0.10
6/20/2017 AD	Received email from court with notice to file brief; reviewed notice for accuracy and saved to client's file; calculated brief due date; updated client calendar		0.10
6/28/2017 AD	Received email from court with PBC order; reviewed order for accuracy and saved to client file; calculated memo due date; updated case file; updated client calendar		0.10
7/10/2017 ME	Reviewed and proofread draft pre briefing conference memorandum. suggested edits		0.30
7/11/2017 AD	Made final revisions and edits to PBC memo; emailed memo to OGC and CLS; prepared and e-filed certificate of service; updated client calendar		0.40
7/19/2017 LN	prepared notice of appearance, filed with the court, updated clients file		0.10
7/25/2017 LN	called client to discuss PBC, updated file		0.10
7/25/2017 LN	prepared for and participated in PBC, made note to file on outcome		1.00
9/22/2017 AD	Outlined arguments for opening brief		2.00
9/26/2017 AD	Drafted opening brief -statement of facts		0.60
9/26/2017 AD	Drafted opening brief - statement of facts		0.90
9/27/2017 AD	Drafted opening brief - argument section		1.10

## Exhibit A

			<u>Hours</u>
9/27/2017 AD	Drafted opening brief - argument section		2.70
9/29/2017 AD	Drafted opening brief - argument section		2.40
10/2/2017 AD	Drafted opening brief - remaining sections		0.90
10/2/2017 AD	Drafted opening brief - completed statement of facts and argument section		3.00
10/5/2017 JZ	Reviewed BVA dec, case file notes, opening brief. Made comments and suggestions for April's brief		1.50
10/9/2017 BJC	review revised draft of brief, suggest to add details of work and to clarify alternative relief		0.70
10/9/2017 BJC	review and suggest edits to draft brief, suggest slightly different approach to VE evidence		1.50
10/9/2017 AD	Revised draft opening brief		1.80
10/10/2017 AD	Made final revisions and edits to brief; checked citations to record and authority; e-filed brief; updated client calendar; updated client file		2.40
10/17/2017 AD	Received email from court with VA counsel's notice of appearance; reviewed notice for accuracy and saved to client's file; updated case file		0.10
12/11/2017 AD	Received emails from court with VA counsel's motion for extension of briefing deadline and court's order granting motion; reviewed motion for accuracy and saved to client's file; updated client calendar		0.10

## Exhibit A

		<u>Hours</u>
12/11/2017 AD	Received, reviewed, and responded to VA attorney's request for position on motion for extension of briefing deadline; updated client file	0.10
1/23/2018 AD	Received email from court with VA counsel's brief; reviewed brief for overview of legal arguments and saved to client's file; updated client calendar	0.10
2/2/2018 AD	Received client call confirming receipt of VA's brief; documented call in client's file	0.10
3/13/2018 AD	Began preparing outline of reply brief	1.10
3/14/2018 AD	Continued outlining reply brief	1.10
3/15/2018 AD	Drafted third portion of reply brief argument	2.00
3/15/2018 AD	Drafted first portion of reply brief argument	3.00
3/19/2018 ME	Reviewed case notes, opening brief, and Appellee brief in preparation for review of draft reply brief, began reviewing draft reply brief	0.50
3/19/2018 ME	Finished review of reply brief and suggested edits	0.50
3/19/2018 AD	Completed draft of reply brief	2.80
3/20/2018 BJC	review draft reply brief and suggest additional edits	0.90
3/21/2018 AD	Reviewed and implemented suggested revisions to reply brief	1.30
3/21/2018 C	Review and edit CAVC reply brief in preparation for filing with the Court, including revising text and citations. Prepare explanatory comments for supervisory attorney.	1.60

## Exhibit A

		<u>Hours</u>
3/23/2018 AD	Made final edits to reply brief; checked citations to record and authority; e-filed brief; updated client file	0.70
3/26/2018 AD	Received phone call from client; provided status update; documented call in client's file	0.10
4/3/2018 AD	Received email from court with record of proceedings filed by VA counsel; reviewed document for accuracy and saved to client's file; updated client calendar	0.10
4/6/2018 AD	Reviewed record of proceedings against record citations in briefs; prepared and e-filed response to record of proceeding; updated client file	0.20
4/9/2018 AD	Received and reviewed for accuracy notice from court of assignment of case to judge; updated client calendar	0.10
4/16/2018 AD	Received email from court with order submitting case to panel for decision; reviewed order for accuracy and saved to client's file; updated client calendar	0.10
5/7/2018 AD	Received email from court with supplemental pleading order; reviewed order and saved to client's file; updated client calendar for follow up	0.10
5/18/2018 AD	Received email from court with order scheduling oral argument; reviewed order for accuracy and saved to client's file; updated client calendar	0.10
5/22/2018 BJC	draft answer to second question	0.90
5/22/2018 BJC	draft answers to all but last question	1.20

## Exhibit A

			<u>Hours</u>
5/22/2018	BJC	complete draft of first answer, reviewed Bowling, Wages, 7261	1.20
5/22/2018	BJC	draft remaining argument, mostly substantially gainful employment	1.90
5/23/2018	BJC	Revise supplemental pleading, add Hood and Cantrell	1.20
5/23/2018	BJC	add 4.16(b) argument (Floyd), get internet cites for DOT and SA cites	2.70
5/23/2018	RVC	Reviewed draft of Appellant's supp brief	0.30
5/24/2018	BJC	edit 4.16b section	1.70
5/30/2018	BJC	edit for 4,16 accuracy and add legal defintion	0.30
5/30/2018	AD	Reviewed supplemental pleading to prepare for oral argument walk through	0.40
5/30/2018	AD	Held oral argument walk through	0.60
5/30/2018	ZMS	Reviewed all pleadings and conducted legal research concerning 4.16(b) and recent cases. Participated in walk through to discuss supplemental pleading	3.00
6/1/2018	BJC	prep and file appearance, update file.	0.10
6/6/2018	BJC	Perform final proofread and file response	0.10
6/6/2018	AD	Called client to provide status update; left voicemail requesting call back; documented call in client's file	0.10
6/7/2018	AD	Received return call from client; provided status update; updated client file	0.10



## Exhibit A

		<u>Hours</u>
7/10/2018	BJC	Outline reply 0.30
7/10/2018	BJC	review OGC response in depth, outline reply based on our arguments and OGC response 0.90
7/11/2018	BJC	revise outline, draft opening paragraph for reply 0.30
7/11/2018	BJC	edit opening, start to draft first point about fact finding, add quotes from GC brief, review and integrate Bowling and Wages 1.40
7/12/2018	BJC	edit first argument 0.50
7/16/2018	BJC	complete fact based argument, edit ultra vires argument, and start Cantrell argument 1.20
7/16/2018	BJC	edit intro and first argument, draft fact finding argument 2.60
7/17/2018	BJC	complete draft of reply 1.50
7/18/2018	BJC	add conclusion, reviewed Gilbert and Robinette, check procedural history and create timeline for date of claim, edit whole pleading for clarity 2.10
7/20/2018	ZMS	Reviewed Secretary's response, pleadings, and notes on case. Reviewed Appellant response drafted by Barb Cook. Discussed case with Barb. 1.40
7/20/2018	AD	Conducted review of draft reply response to supplemental briefing order; verified accuracy and citations to record and authority; suggested edits 1.40
8/8/2018	AD	Received email from court with new lead VA counsel's notice of appearance; reviewed notice for accuracy and saved to client's file; updated client calendar 0.10

## Exhibit A

			<u>Hours</u>
8/10/2018 AD	Reviewed reasoning in precedential decision in Withers regarding substantially gainful/sedentary employment		0.20
8/16/2018 BJC	analyze Withers; memo to the file		2.40
8/17/2018 AD	Researched memorandum decisions pertinent to standard for substantially gainful employment		0.40
8/19/2018 BJC	review opening brief and reply, review notes on oral argument, integrate Withers points		1.50
8/22/2018 BJC	draft supp authority		0.60
8/22/2018 BJC	participated in oral argument walk through		1.00
8/22/2018 AD	Met with co-counsel to discuss oral argument approach		1.00
8/23/2018 BJC	edit draft of supplemental authority		0.10
8/23/2018 BJC	finish draft of supp authority		1.30
8/23/2018 JZ	Reviewed draft supplemental authority		0.10
8/23/2018 C	Review and edit CAVC supplemental case citation memorandum in preparation for filing with the Court, including revising text and citations. Prepare explanatory comments for attorney review.		0.40
8/24/2018 BJC	performed final proofread and filed supp authority		0.10
8/24/2018 BJC	edited supp authority		0.20
8/25/2018 BJC	Draft outline for oral argument		1.00

## Exhibit A

			<u>Hours</u>
8/26/2018	BJC	Added to outline for oral argument	0.40
8/26/2018	BJC	prep supplemental authority for Connors, reviewed Sellers	0.40
8/27/2018	BJC	edit supplemental authority to add Sellers	0.70
8/28/2018	C	Review and edit CAVC supplemental authority in preparation for filing with the Court, including revising text and citations, and incorporating legal research. Prepare explanatory comments for attorney review.	0.20
8/29/2018	BJC	Perform final proofread of, and file supp authority	0.20
8/30/2018	BJC	review Bailey and Beaty and add to oral argument outline	0.20
8/30/2018	BJC	Prepared for and contributed to moot including discussion of precedential decision and law and acted as a "judge" at the moot to simulate the oral argument experience	1.00
8/30/2018	BJC	review cases listed in pleadings, edit oral argument outline accordingly	1.50
8/30/2018	RVC	Prepared for and contributed to moot including discussion of precedential decision and law and acted as a "judge" at the moot to simulate the oral argument experience	1.00
8/30/2018	AD	Prepared for and contributed to moot including discussion of precedential decision and law and acted as a "judge" at the moot to simulate the oral argument experience	1.20

# Exhibit A

		<u>Hours</u>
8/30/2018 ZMS	Prepared for and contributed to moot including discussion of precedential decision and law and acted as a "judge" at the moot to simulate the oral argument experience	3.00
9/2/2018 BJC	Added case law to outline of oral argument	2.20
9/4/2018 BJC	review cases cited by both parties, read significant ones in depth in preparation for oral argument	3.00
9/4/2018 BJC	travel to DC for OA	4.50
9/4/2018 AD	Traveled to DC to attend oral argument	3.00
9/5/2018 BJC	Attended oral argument preparatory meeting, argument, and post-argument discussion	2.50
9/5/2018 BJC	travel back to office after oral argument	4.50
9/5/2018 AD	Called client to advise of oral argument; documented call in client's file	0.10
9/5/2018 AD	Attended oral argument preparatory meeting, argument, and post-argument discussion	2.50
9/5/2018 AD	Traveled from DC to Providence after oral argument	3.00
9/6/2018 AD	Returned client's call; provided link to oral argument audio; documented call in client's file	0.10
		<u>Amount</u>
		123.70 \$24,404.72

## Exhibit A

### Expenses

	<u>Amount</u>
Airfare for Oral Argument - AD	277.40
Airfare for Oral Argument - BC	599.98
Hotel - Oral Argument - AD	363.13
Hotel - Oral Argument - BC	325.94
Metro in DC - AD	5.00
Parking at airport - AD	40.00
Total Expenses	<hr/> \$1,611.45
	<hr/>
	123.70    \$26,016.17

### Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
April Donahower	51.80	200.08	\$10,364.21
Barbara J. Cook	54.50	193.83	\$10,563.80
Christina Collins	2.20	197.95	\$435.49
Jenna Zellmer	1.60	200.08	\$320.13
Lindy Nash	1.20	200.08	\$240.10
Megan Ellis	1.40	200.08	\$280.11
Nicholas Phinney	2.30	200.08	\$460.19
Robert V. Chisholm	1.30	200.08	\$260.10
Zachary M. Stolz	7.40	200.08	\$1,480.59

# Exhibit A

Time from 10/1/2018 to 6/11/2019

Case No. 243869

Client: Ray, Mr. Eddie

			<u>Hours</u>
10/9/2018	APRIL	Returned client call; documented attempt in client's file	0.10
10/11/2018	APRIL	Returned client's call; provided status update; updated client file	0.20
1/11/2019	APRIL	Returned client's call; provided status update; updated client file	0.10
2/11/2019	APRIL	Listened to voice mail from client and returned client's call; provided status update	0.10
2/27/2019	APRIL	Received phone call from client; provided status update; updated client file	0.10
3/14/2019	APRIL	Received email from court with panel decision; reviewed decision against issues argued in briefs; discussed decision with Barb and team; drafted and distributed summary of decision; updated client calendar	1.30
3/14/2019	ZACH	Reviewed Court's precedent 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.	0.80
3/15/2019	APRIL	Discussed court's decision with client; documented call in client's file	0.30
3/22/2019	APRIL	Received phone call from client and answered questions about judgment and mandate; documented call in client's file	0.20
4/8/2019	APRIL	Received email from court with order entering judgment; reviewed order for accuracy and saved to client's file; updated client calendar	0.10
4/8/2019	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
4/9/2019	APRIL	Received email from court with corrected judgment order; reviewed order for accuracy and saved to client's file	0.10
6/7/2019	APRIL	Called client to provide status update; left voice mail; updated client file	0.10
6/10/2019	APRIL	Received notice of and returned client's missed call; provided status update; updated client file	0.20
6/11/2019	APRIL	Received email from court with order entering mandate; reviewed order for accuracy and saved to client's file; updated client calendar	0.10
6/11/2019	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
6/11/2019	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.50
6/11/2019	ZACH	Reviewed EAJA Application for proofreading purposes and to ensure billing accuracy.	0.50

## Timekeeper Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
<b>APRIL</b>	<b>3.0</b>	<b>\$ 200.08</b>	<b>\$ 600.24</b>
<b>DANIELLE</b>	<b>1.7</b>	<b>\$ 200.08</b>	<b>\$ 340.14</b>
<b>ZACH</b>	<b>1.6</b>	<b>\$ 200.08</b>	<b>\$ 320.13</b>
	<b>6.3</b>		<b>\$ 1,260.51</b>

## 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
-



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).