

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

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| JOE SHOEMAKER, JR., |) | |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | Vet. App. No. 18-1023 |
| |) | |
| ROBERT L. WILKIE, |) | |
| Secretary of Veterans Affairs, |) | |
| |) | |
| Appellee. |) | |

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FOR AWARD OF REASONABLE ATTORNEYS’ FEES AND
EXPENSES PURSUANT TO 28 U.S.C. § 2412(d)**

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**APPELLANT’S APPLICATION FOR AWARD OF REASONABLE
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 U.S. Vet. App. Rule 39, Appellant, Joe Shoemaker, Jr. applies for an award of reasonable attorneys’ fees and expenses in the amount of **\$ 23,119.93.**

PROCEDURAL HISTORY

On November 1, 2017 the Board of Veterans’ Appeals (Board) issued a decision that, denied Appellant’s claim for entitlement to an effective date prior to February 11, 2011, for the grant of special monthly compensation (SMC) based on the need for regular aid and attendance.¹ Appellant filed a timely notice of Appeal with this Court on February 27, 2018.

¹The Board also noted that it lacked jurisdiction over a claim for an initial compensable rating for traumatic brain injury and entitlement to automobile or other conveyance and adaptive equipment because these matters were pending before the regional office (RO) and Appellant did not challenge this part of the decision. See *Pederson v. McDonald*, 27 Vet. App. 276 (2015).

On April 27, 2018, the Secretary served on Appellant's counsel the 4,781-page Record Before the Agency (RBA). On July 3, 2018, the Court issued an Order file Appellant's brief within sixty days. On July 18, 2018, the Court issued an Order scheduling an August 14, 2018 Rule 33 Staffing Conference. The Conference was subsequently rescheduled for August 7, 2018.

Pursuant to the Court's Order, Appellant's counsel prepared a 6-page Rule 33 Summary of the Issues addressing the legal errors committed by the Board in the decision on appeal, which she served on counsel for the Secretary and Central Legal Staff (CLS) counsel on July 20, 2018. On August 7, 2018, the Rule 33 Staffing Conference was held as scheduled, but the parties failed to arrive at a joint resolution.

On October 22, 2018, Appellant filed his 18-page initial brief (hereinafter App. Br.) with the Court. In his brief, Appellant argued that the Board erred in finding his appeal for entitlement to SMC was withdrawn based on a written Form 119 because 1) it failed to determine whether Appellant understood the consequences of the withdrawal of his appeal, see *DeLisio v. Shinseki*, 25 Vet. App. 45 (2011); see also App. Br. at 8–11; and 2) there is evidence in the record that shows Appellant did not understand the consequences of the withdrawal of his appeal or the fact that his appeal had been withdrawn, see App. Br. at 10–13.

Appellant further argued that the Board erred in finding he was not eligible to receive SMC based on a lack of intent to seek SMC because the VA must evaluate entitlement to any ancillary benefits, such as SMC, that arise as a part of

the adjudication. See 38 C.F.R. § 3.155(d)(2); see App. Br. at 11–15. Specifically, the Board erred in finding Appellant did not raise his entitlement to SMC when in fact, the record shows otherwise. See App. Br. at 13–14. Finally, the Board erred in finding that Appellant was not eligible to receive SMC based on a lack of intent to seek it because it failed to explain why it ignored VA policy to consider inferred issues, such as SMC, even if not specifically raised by the claimant. See *Akles v. Derwinski*, 1 Vet. App. 118 (1991); Adjudication Procedures Manual, M21-1, paragraph 46.08(a); App. Br. at 15–17.

On February 4, 2019, the Secretary filed his responsive brief (hereinafter Sec. Br.) urging the Court to affirm the Board decision. In his brief, the Secretary argued that the Board did not err in finding Appellant withdrew his appeal because the written withdrawal met the regulatory requirements. See Sec. Br. 5–8. Additionally, the Secretary also argued the Board did not ignore an earlier claim to SMC or fail to evaluate SMC in an applicable circumstance because Appellant’s earlier requests resulted in increased ratings and a grant for SMC. See *id.* at 9.

On February 19, 2019, Appellant filed his 10-page Reply Brief (hereinafter App. Rep. Br.) with the Court. In his brief, Appellant explained the Secretary misstated the law in arguing the Board did not err in finding Appellant withdrew his claim because the *DeLisio* standard also applies to written claim withdrawals and not only oral withdrawals, as evidenced by precedent. 25 Vet. App. at 57; see App. Rep. Br. at 2–8. Furthermore, Appellant further explained that his claim should be remanded because his appeal was predicated on an earlier effective date based

upon the fact that he did not withdraw his claim, as the Board erroneously concluded. See App. Rep. Br. at 9.

On March 4, 2019, the Secretary filed the Record of Proceedings with the Court. On June 17, 2019, the Court ordered the case be submitted to a panel for decision. On June 26, 2019, the Court scheduled oral argument in the case, set for September 5, 2019, at 10 a.m., allocating 30 minutes to each party for presentation of arguments.

On September 26, 2019, the Court issued its order to both parties to file a supplemental brief within 14 days addressing 1) whether there was an explanation as to why the record shows that Appellant withdrew his appeal on March 29, 2007, based on a grant of service connection for erectile dysfunction when the rating decision that granted service connection is dated April 23, 2007; and 2) based on VA concession that, if evidence contemporaneous to a purported withdrawal raised the possibility that the claimant did not intend to withdraw his or her appeal, the Board should address that evidence in determining whether the appeal had been withdrawn, A) whether evidence submitted four years after a written withdrawal be sufficiently contemporaneous to reasonably raise the issue of intent and require the Board to discuss it, and B) whether evidence of intent is contemporaneous to the purported withdrawal a question that the Court may address in the first instance.

On November 12, 2019, Appellant filed his 10-page supplemental brief (App. Supp. Br.) with the Court. In his brief, Appellant argued that Appellant did not

withdraw his appeal because the March 29, 2007 report of contact is an irregular document in that its author claims that Appellant told him that an event had already occurred when, in fact, the event had yet to occur; therefore, the Board and Secretary could not validly rely upon the document for the proposition that Appellant wanted to withdraw his claims. See App. Supp. Br. at 1–3.

Appellant also argued that evidence submitted four years after purported withdrawal is sufficiently contemporaneous for the Board to be required to address it because 1) whether evidence is sufficiently contemporaneous to reasonably raise the issue of a veteran's intent should properly be measured from the date on which notice that an issue on appeal has been withdrawn has been received, see *Acree v. O'Rourke*, 891 F.3d 1009 (Fed. Cir. 2018); App. Supp. Br. at 3–7; and 2) based on the language of 38 C.F.R. § 20.205(c) and the prior 38 C.F.R. § 3.204(c), evidence is sufficiently contemporaneous if it is submitted anytime during the period that a veteran still has left to file the next submission due in a pending case, see App. Supp. Br. at 7–9. Finally, Appellant argued that the Court may address the legal standards necessary to determine what constitutes whether evidence of intent is contemporaneous to the purported withdrawal in the first instance, see *Acree*, 891 F.3d at 1012–1013; *DeLisio*, 25 Vet. App. at 57, but it may not determine whether particular pieces of evidence were submitted contemporaneously in the first instance, see 38 U.S.C. § 7261(a)(4); App. Supp. Br. at 9–10.

Also on November 12, 2019, the Secretary filed his 6-page supplemental brief (Sec. Supp. Br.) with the Court. In his brief, the Secretary argued that there

is no clear explanation why the record shows that Appellant withdrew his appeal on March 29, 2007, based on a grant of service connection for erectile dysfunction when the rating decision that granted service connection was dated April 11, 2007, and the letter notifying Appellant of the decision was dated April 23, 2007; however, it is possible Appellant's VA accredited representative received advanced notice of the rating decision. See Sec. Supp. Br. at 2. Additionally, the Secretary argued that evidence submitted four years after a written withdrawal could be sufficient to reasonably raise the issue of intent and require the Board to discuss it, depending on the nature of the evidence, as well as the other evidence of record; however, the evidence in this record is insufficient to require the Board to address the issue of whether Appellant intended to withdraw the claim. See *id.* at 2–5.

In its Memorandum Decision, the Court agreed that the Board erred by failing to support its decision concluding the March 2007 report of contact was a valid withdrawal of the appeal with an adequate statement of reasons or bases and remanded the matter for further proceedings. On January 9, 2020, the Court entered Judgment on Appellant's claim and entered Mandate, effective March 9, 2020, pursuant to U.S. Vet. App. R. 41(a).

ARGUMENT

I. APPELLANT IS A PREVAILING PARTY AND ELIGIBLE TO RECEIVE AN AWARD.

Under 28 U.S.C. § 2412(d), a court shall award to a prevailing party fees and other expenses incurred by that party in any civil action, including proceedings for judicial review of agency action. To obtain “prevailing party” status, a party need only to have obtained success “on any significant issue in litigation which achieve[d] some of the benefit ... sought in bringing the suit.” *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993) (quoting *Texas State Teachers Assn. v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791-92 (1989)).

In this case, Appellant is a prevailing party entitled to an award of fees and costs because the Court vacated the relevant part of the Board’s November 1, 2017 decision that denied an effective date before February 11, 2011, for the grant of SMC based on the need for regular aid and attendance. *See Zuberi v. Nicholson*, 19 Vet. App. 541 (2006); *Sumner v. Principi*, 15 Vet. App. 256 (2001) (en banc). The Court-ordered relief creates the “material alteration of the legal relationship of the parties’ necessary to permit an award of attorney’s fees.” *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep’t of Health and Human Res.*, 532 U.S. 598, 604 (2001) (quoting *Garland Indep. Sch. Dist.*, 489 U.S. at 792).

Appellant is a party eligible to receive an award of reasonable fees and expenses because his net worth did not exceed \$2 million (two million dollars) at the time this civil action was filed. As an officer of the Court, the undersigned counsel hereby states that Appellant’s net worth did not exceed \$2 million (two million dollars) at the time this civil action was filed, nor did he own any unincorporated business, partnership, corporation, association, unit of local government, or organization, of

which the net worth exceeded \$7 million (seven million dollars) and which had more than 500 employees. See *Bazalo v. Brown*, 9 Vet. App. 304, 309, 311 (1996). In addition, Appellant submitted a Declaration of Financial Hardship, which was accepted for filing by the Court on March 2, 2018. See *Owens v. Brown*, 10 Vet. App. 65, 67 (1997).

II. THE POSITION OF THE SECRETARY OF VETERANS AFFAIRS WAS NOT SUBSTANTIALLY JUSTIFIED.

The Secretary can defeat Appellant's application for fees and costs only by demonstrating that the government's position was substantially justified. See *Brewer v. American Battle Monument Comm'n*, 814 F.2d 1564, 1566-67 (Fed. Cir. 1987); *Stillwell v. Brown*, 6 Vet. App. 291, 301 (1994). The U.S. Supreme Court has held that for the position of the government to be substantially justified, it must have a "reasonable basis both in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988); accord *Beta Sys. v. United States*, 866 F.2d 1404, 1406 (Fed. Cir. 1989).

In this case, the Secretary's administrative and litigation position were not substantially justified. As described in the "Procedural History," *supra*, the Court set aside and remanded the Board's November 1, 2017 decision because the Board erred by failing to provide an adequate statement of reasons or bases. This error and others committed by the Board, had no reasonable basis in fact or in law.

In addition, the litigation position of the Secretary, who defended the Board's decision despite the above-referenced errors, had no reasonable basis in fact or in law.

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

An itemized statement of the services rendered and the reasonable fees and expenses for which Appellant seeks compensation is attached to this application as Exhibit A. Included in Exhibit A is a certification that lead counsel has “(1) reviewed the combined billing statement and is satisfied that it accurately reflects the work performed by all counsel and (2) considered and eliminated all time that is excessive or redundant.” *Baldrige and Demel v. Nicholson*, 19 Vet. App. 227, 240 (2005). In the exercise of billing judgment, Appellant has eliminated **134.9** hours of attorney time and **3.3** hours of paralegal and law clerk time from this itemized statement and this fee petition.

Appellant seeks attorneys’ fees at the following rates for representation in the Court of Appeals for Veterans Claims:²

² A rate in excess of \$125 per hour for the attorneys for Appellant in this case is justified based on the increase in the cost of living since the EAJA was amended in March 1996. See 28 U.S.C. § 2412(d)(2)(A)(ii). The \$125 attorney fee rate, adjusted for inflation for the Washington Metropolitan Area, was \$ 206.52 in December 2018, the month the initial brief was filed. See Bureau of Labor Statistics Data, CPI-U (Exhibit B). This rate was calculated by using the CPI-U for the Washington-Arlington-Alexandria, DC-VA-MD-WV area adjusted for inflation between March 1996 and December 2018, using the average of the data for the months prior to and after initial brief was filed. See Exhibit B; *Mannino v. West*, 12 Vet. App. 242 (1999); see also *Apodackis v. Nicholson*, 19 Vet. App. 91, 95 (2005). Related to the work of Patrick Berkshire, the \$125 attorney fee rate, adjusted for inflation for the Augusta, Georgia area, was \$ 194.49 in December 2018, the month the initial brief was filed. See Bureau of Labor Statistics Data, CPI-U (Exhibit B). This rate was calculated by using the CPI-U for the South adjusted for inflation between March 1996 and December 1996 and the South B/C area adjusted for inflation between December 1996 and December 2018. The market rates for Appellant’s attorneys exceeded the requested rates per hour during the relevant

| <u>Name</u> | <u>Rate</u> | <u>Hours</u> | <u>Fee Amount</u> |
|--|------------------------|---------------------|--------------------------|
| Barton F. Stichman (1974 law graduate) | \$ 206.52 | 2.0 | \$ 413.04 |
| W. Lawrence Wescott (1985 law graduate) | \$ 206.52 | 52.8 | \$ 10,904.26 |
| Christine Cote Hill (1996 law graduate) | \$ 206.52 | 0.3 | \$ 61.96 |
| Richard V. Spataro (2005 law graduate) | \$ 206.52 | 1.5 | \$ 309.78 |
| David Y. Chung (2005 law graduate) | \$ 206.52 | 2.0 | \$ 413.04 |
| Patrick Berkshire (2009 law graduate) | \$ 194.49 | 26.0 | \$ 5,056.74 |
| Jill C. Davenport (2014 law graduate) | \$ 206.52 | 11.2 | \$ 2,313.02 |
| L. Michael Marquet (2017 law graduate) | \$ 206.52 | 12.1 | \$ 2,498.89 |
| Angela Nedd (paralegal) | \$ 164.00 \$ 166.00 | 0.2 0.1 | \$ 32.80 \$ 16.60 |

time period. See *Covington v. District of Columbia*, 839 F. Supp. 894, 904–05 (D.D.C. 1993), *aff'd*, 58 F.3d 1101 (D.C. Cir. 1995). The prevailing market rate for the work done by paralegals and law clerks was at least \$164.00 from June 1, 2017, to May 31, 2018, and at least \$166.00 from June 1, 2018, to the present. See USAO Attorney’s Fees Matrix, 2015-2020 (Exhibit C) (“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 . . . area.”); see also *Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996); *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008).

| | | | |
|----------------------------------|-----------|-----|-----------|
| | \$ 173.00 | 0.1 | \$ 17.30 |
| Alexandra Gonsman (law clerk) | \$ 173.00 | 5.5 | \$ 951.50 |

SUBTOTAL: \$ 22,988.93

The reasonable expenses for which Appellant seeks compensation are:

| <u>Nature of Expense</u> | <u>Expense Amount</u> |
|----------------------------------|------------------------------|
| Federal Express and USPS Charges | \$ 60.00 |
| Duplication Charges | \$ 71.00 |

SUBTOTAL: \$ 131.00

TOTAL: \$ 23,119.93

WHEREFORE, Appellant respectfully requests that the Court award attorneys' fees and expenses in the total amount of **\$ 23,119.93.**

Respectfully submitted,

FOR APPELLANT:

Date: April 2, 2020

/s/ Christine Cote Hill
Christine Cote Hill
Barton F. Stichman
National Veterans Legal
Services Program
1600 K Street, NW, Suite 500
Washington, DC 20006-2833
(202) 621-5674

Counsel for Appellant

EXHIBIT A

**NVLSP Staff Hours for Joe Shoemaker, Jr.
Vet. App. No. 18-1023**

Date: 1/29/2018 0.1 Staff: Richard V. Spataro
Review and analyze Board of Veterans' Appeals (BVA) decision and identify issues to raise on appeal.

Date: 1/30/2018 1.4 Staff: Richard V. Spataro
Draft memorandum regarding issues to raise on appeal, review relevant law, and review relevant documents in VBMS regarding same.

Date: 2/9/2018 0.0 Staff: Jill C. Davenport
Review BVA decision and update internal file. **[0.1 eliminated in the exercise of billing judgment]**

Date: 2/12/2018 0.4 Staff: Jill C. Davenport
Teleconference with client regarding BVA decision and issues to raise on appeal and questions regarding same (0.2); draft correspondence to client regarding case initiation, with documents for client to execute and return (0.2).

Date: 2/20/2018 0.1 Staff: Jill C. Davenport
Teleconference with client regarding his questions regarding case initiation (0.1); draft correspondence to client regarding documents to execute and return, and filing of appeal, with enclosure **[0.1 eliminated in the exercise of billing judgment]**.

Date: 2/27/2018 0.2 Staff: Angela Nedd
Draft Notices of Appearance and provide to attorney to finalize (0.1); draft email to Clerk of the Court regarding case initiation, with attachments (0.1).

Date: 2/27/2018 0.3 Staff: Jill C. Davenport
Teleconference with client regarding case status and filing of appeal (0.1); teleconference with client regarding documents to execute and return, and filing of appeal **[0.1 eliminated in the exercise of billing judgment]**; finalize Notice of Appeal and Notices of Appearance (0.2)**[Additional 0.1 eliminated in the exercise of billing judgment]**.

Date: 2/28/2018 0.3 Staff: Jill C. Davenport
Draft detailed correspondence to client regarding next steps in appeal, including projected timeline of appeal.

Date: 3/2/2018 0.3 Staff: Jill C. Davenport
Review correspondence from client regarding appeal and finalize Declaration of Financial Hardship and Retainer Agreement (0.2); draft email to VA General Counsel regarding VA consent to release of information, with attachment (0.1).

Date: 3/12/2018 0.1 Staff: Jill C. Davenport
Teleconference with client regarding case status.

Date: 3/22/2018 0.1 Staff: Jill C. Davenport
Review and analyze BVA decision transmitted to the Court for accuracy.

Date: 4/27/2018 0.0 Staff: Jill C. Davenport
Review notice of service of Record Before the Agency (RBA) and update internal file. **[0.1 eliminated in the exercise of billing judgment]**

Date: 5/14/2018 0.1 Staff: Jill C. Davenport
Teleconference with client regarding case status (0.1); conference with M. Marquet regarding RBA completeness review and analysis **[0.1 eliminated in the exercise of billing judgment]**.

Date: 5/14/2018 4.8 Staff: L. Michael Marquet
Review and analyze 4,781-page RBA through page 1,068 to ensure legibility and completeness (2.0); review and analyze 4,781-page RBA through page 2,200 to ensure legibility and completeness (2.8).

Date: 5/15/2018 7.3 Staff: L. Michael Marquet
Review and analyze 4,781-page RBA through page 3,000 to ensure legibility and completeness (3.0); review and analyze 4,781-page RBA through page 3,474 to ensure legibility and completeness (1.1); review and analyze 4,781-page RBA through page 3,600 to ensure legibility and completeness (1.6); review and analyze 4,781-page RBA through page 4,044 to ensure legibility and completeness (1.6).

Date: 5/15/2018 0.0 Staff: Jill C. Davenport
Conference with M. Marquet regarding legibility and completeness of RBA.
[0.1 eliminated in the exercise of billing judgment]

Date: 5/16/2018 0.0 Staff: L. Michael Marquet
Review and analyze page 4,781-page RBA through end to ensure legibility and completeness. **[2.2 eliminated in the exercise of billing judgment]**

Date: 5/16/2018 0.0 Staff: Jill C. Davenport
Review documents identified as incomplete or illegible to evaluate whether response to RBA (dispute) is necessary; evaluate that no dispute necessary.
[0.1 eliminated in the exercise of billing judgment]

Date: 7/3/2018 0.0 Staff: Jill C. Davenport
Review Court notice to file brief, update informal file. **[0.1 eliminated in the exercise of billing judgment]**

Date: 7/6/2018 3.0 Staff: Jill C. Davenport
Review and analyze RBA, through page 500, and take detailed notes for preparation of Rule 33 Summary of the Issues.

Date: 7/13/2018 0.1 Staff: Jill C. Davenport
Teleconference with client regarding case status.

Date: 7/18/2018 0.0 Staff: Jill C. Davenport
Review Order scheduling Rule 33 Staff Conference and update informal file (0.1); draft email to VA counsel and Court Central Legal Staff (CLS) regarding motion to reschedule Rule 33 Staff Conference (0.1); draft motion to reschedule Rule 33 Staff Conference (0.1); update internal file (0.1). **[Entire 0.4 eliminated in the exercise of billing judgment]**

Date: 7/19/2018 0.0 Staff: Jill C. Davenport
Review Order granting motion to reschedule conference, update informal file.
[0.1 eliminated in the exercise of billing judgment]

Date: 7/20/2018 5.5 Staff: Jill C. Davenport

Review and analyze RBA and take detailed notes for preparation of Rule 33 Summary of the Issues, through page 2,000 (3.0); review and analyze RBA and take detailed notes for preparation of Rule 33 Summary of the Issues, through end (0.6); draft Rule 33 Summary of the Issues (1.1); finalize 6-page Rule 33 Summary of the Issues (0.2); review and analyze relevant pages of the RBA to prepare attachment to Rule 33 Summary of the Issues (0.1); draft email to VA counsel and CLS regarding Rule 33 Staff Conference and Summary of Issues, with attachment (0.1); draft Rule 33 Certificate of Service (0.1); teleconference with client regarding Rule 33 Summary of the Issues, conference, and settlement authority (0.1); draft correspondence to client regarding Rule 33 Summary of the Issues, conference, and settlement authority, with enclosures (0.2).

Date: 7/23/2018 0.1 Staff: Angela Nedd

Finalize correspondence to client regarding Rule 33 Summary of the Issues.

Date: 7/31/2018 0.1 Staff: Jill C. Davenport

Teleconference with client regarding his questions about Rule 33 Summary of the Issues/settlement authority.

Date: 8/7/2018 0.7 Staff: Jill C. Davenport

Prepare for Rule 33 Staff Conference, including review of Rule 33 Summary of the Issues and relevant evidence (0.3); participate in Rule 33 Staff Conference (0.2); update internal file regarding outcome of conference and Secretary's position in order to provide update to client and for preparation of initial brief (0.1); teleconference with client regarding outcome of Rule 33 Staff Conference and next steps (0.1).

Date: 8/28/2018 0.0 Staff: Jill C. Davenport

Draft motion to extend time within which to file initial brief (0.1); review Order granting motion, update informal file (0.1). **[Entire 0.2 eliminated in the exercise of billing judgment]**

Date: 9/6/2018 0.1 Staff: Jill C. Davenport

Draft email to co-counsel regarding initial brief **[0.1 eliminated in the exercise of billing judgment]**; teleconference with client regarding case status (0.1).

Date: 9/10/2018 0.0 Staff: Jill C. Davenport
Teleconference with co-counsel regarding brief. **[0.1 eliminated in the exercise of billing judgment]**

Date: 9/11/2018 0.0 Staff: Jill C. Davenport
Teleconference with client regarding withdrawal and case status. **[0.1 eliminated in the exercise of billing judgment]**

Date: 9/12/2018 0.0 Staff: L. Michael Marquet
Draft Notice of Appearance and Notice of Withdrawal. **[0.2 eliminated in the exercise of billing judgment]**

Date: 9/13/2018 0.0 Staff: L. Michael Marquet
Draft Notice of Appearance and Notice of Withdrawal. **[0.1 eliminated in the exercise of billing judgment]**

Date: 9/13/2018 0.0 Staff: Jill C. Davenport
Teleconference with co-counsel regarding arguments to raise in initial brief and evaluate litigation strategy for preparation of initial brief, and draft email to co-counsel regarding same. **[0.6 eliminated in the exercise of billing judgment]**

Date: 9/13/2018 0.0 Staff: David Y. Chung
Review relevant materials in preparation for teleconference with J. Davenport and W. Wescott regarding initial brief argument and evaluating litigation strategy and participate in same. **[1.0 eliminated in the exercise of billing judgment]**

Date: 9/13/2018 0.0 Staff: W. Lawrence Wescott
Review relevant materials in preparation for teleconference with D. Chung and W. Wescott regarding initial brief argument and evaluating litigation strategy and participate in same. **[0.8 eliminated in the exercise of billing judgment]**

Date: 9/17/2018 0.0 Staff: W. Lawrence Wescott
Review and analyze RBA and review relevant law for preparation of initial brief. **[4.0 eliminated in the exercise of billing judgment]**

Date: 9/18/2018 1.3 Staff: W. Lawrence Wescott
Review relevant law for inclusion in initial brief argument.

Date: 9/20/2018 0.5 Staff: W. Lawrence Wescott
Continue review of relevant law for inclusion in initial brief argument.

Date: 9/21/2018 2.5 Staff: W. Lawrence Wescott
Review RBA for outstanding issues for preparation of initial brief; begin drafting chronology for preparation of initial brief, Statement of Facts. (2.5)**[Additional 1.0 eliminated in the exercise of billing judgment]**

Date: 9/24/2018 1.0 Staff: W. Lawrence Wescott
Continue review of relevant law for inclusion in initial brief argument.

Date: 9/25/2018 0.6 Staff: W. Lawrence Wescott
Continue review of relevant law for inclusion in initial brief argument **[0.6 eliminated in the exercise of billing judgment]**; begin preparation of outline of initial brief argument (0.6); email D. Chung regarding initial brief **[0.1 eliminated in the exercise of billing judgment]**.

Date: 9/27/2018 0.0 Staff: David Y. Chung
Teleconference with W. Wescott regarding initial brief strategy and legal advice regarding same; review materials provided from P. Berkshire. **[0.5 eliminated in the exercise of billing judgment]**

Date: 9/27/2018 0.0 Staff: W. Lawrence Wescott
Teleconference with D. Chung regarding initial brief strategy and further evaluate same. **[0.3 eliminated in the exercise of billing judgment]**

Date: 10/1/2018 0.0 Staff: David Y. Chung
Teleconference with W. Wescott and P. Berkshire regarding initial brief strategy and further evaluate same. **[0.5 eliminated in the exercise of billing judgment]**

Date: 10/1/2018 0.0 Staff: W. Lawrence Wescott

Teleconference with D. Chung and P. Berkshire regarding initial brief strategy and further evaluate same. **[0.3 eliminated in the exercise of billing judgment]**

Date: 10/2/2018 0.0 Staff: W. Lawrence Wescott
Further review of relevant law for inclusion in initial brief argument. **[0.3 eliminated in the exercise of billing judgment]**

Date: 10/4/2018 0.0 Staff: W. Lawrence Wescott
Continue review and analysis of tabbed RBA for outstanding issues; draft chronology for preparation of initial brief, Statement of Facts **[3.0 eliminated in the exercise of billing judgment]**; conduct legal research in preparation for initial brief **[1.5 eliminated in the exercise of billing judgment]**.

Date: 10/5/2018 3.0 Staff: W. Lawrence Wescott
Continue review of relevant law for inclusion in initial brief argument**[3.0 eliminated in the exercise of billing judgment]**; begin drafting initial brief, Statement of Facts (3.0).

Date: 10/6/2018 1.0 Staff: W. Lawrence Wescott
Continue drafting outline of initial brief argument.

Date: 10/8/2018 0.0 Staff: W. Lawrence Wescott
Email exchange with P. Berkshire regarding initial brief outline. **[0.3 eliminated in the exercise of billing judgment]**

Date: 10/9/2018 0.0 Staff: David Y. Chung
Review initial brief outline. **[0.8 eliminated in the exercise of billing judgment]**

Date: 10/10/2018 0.0 Staff: David Y. Chung
Review initial brief outline. **[0.5 eliminated in the exercise of billing judgment]**

Date: 10/10/2018 2.5 Staff: W. Lawrence Wescott

Continue drafting initial brief, Statement of Facts (1.5) and begin drafting initial brief argument (1.0).

Date: 10/11/2018 0.0 Staff: David Y. Chung
Review relevant case law for inclusion in initial brief/review of same. **[1.0 eliminated in the exercise of billing judgment]**

Date: 10/12/2018 3.5 Staff: W. Lawrence Wescott
Draft argument of initial brief.

Date: 10/14/2018 2.3 Staff: W. Lawrence Wescott
Draft inserts to argument I and II of initial brief.

Date: 10/15/2018 0.0 Staff: David Y. Chung
Review initial brief outline and teleconference with W. Wescott regarding same. **[3.8 eliminated in the exercise of billing judgment]**

Date: 10/15/2018 1.3 Staff: W. Lawrence Wescott
Teleconference with D. Chung and add inserts to initial brief argument I and II.

Date: 10/15/2018 0.0 Staff: Patrick A. Berkshire
Review RBA and other case materials for preparation of initial brief/review of same (1.0); review initial brief outline (0.6). **[Entire 1.6 eliminated in the exercise of billing judgment]**

Date: 10/16/2018 0.5 Staff: W. Lawrence Wescott
Continue drafting argument and inserts to arguments I and II.

Date: 10/17/2018 0.0 Staff: David Y. Chung
Teleconference with W. Wescott and P. Berkshire regarding initial brief. **[0.3 eliminated in the exercise of billing judgment]**

Date: 10/17/2018 1.8 Staff: W. Lawrence Wescott
Teleconference with D. Chung and P. Berkshire and continue drafting inserts

to initial brief arguments I and II.

Date: 10/17/2018 0.0 Staff: Patrick A. Berkshire
Review initial draft brief (1.0); teleconference with co-counsel regarding same (0.2). **[Entire 1.2 eliminated in the exercise of billing judgment]**

Date: 10/19/2018 0.0 Staff: Patrick A. Berkshire
Review initial brief edits and outline. **[0.6 eliminated in the exercise of billing judgment]**

Date: 10/19/2018 1.8 Staff: W. Lawrence Wescott
Continue drafting argument and inserts to arguments I and II; draft summary of the argument.

Date: 10/22/2018 0.0 Staff: David Y. Chung
Review and revise initial brief. **[0.5 eliminated in the exercise of billing judgment]**

Date: 10/22/2018 0.0 Staff: W. Lawrence Wescott
Review and finalize initial brief, to include style edits to add persuasive value to legal argument. **[1.0 eliminated in the exercise of billing judgment]**

Date: 2/5/2019 1.5 Staff: W. Lawrence Wescott
Begin review of 10-page responsive brief and outline same for preparation of reply brief argument outline.

Date: 2/6/2019 3.0 Staff: W. Lawrence Wescott
Review relevant law for inclusion in reply brief argument (1.5)**[Additional 0.5 eliminated in the exercise of billing judgment]**; outline reply brief argument (1.5)**[Additional 0.3 eliminated in the exercise of billing judgment]**.

Date: 2/8/2019 1.0 Staff: W. Lawrence Wescott
Begin drafting reply brief argument.

Date: 2/11/2019 1.5 Staff: W. Lawrence Wescott
Continue drafting reply brief.

Date: 2/12/2019 0.0 Staff: David Y. Chung
Review and revise reply brief argument. **[0.5 eliminated in the exercise of billing judgment]**

Date: 2/12/2019 0.3 Staff: W. Lawrence Wescott
Draft inserts to reply brief, per D. Chung.

Date: 2/13/2019 2.3 Staff: W. Lawrence Wescott
Continue drafting reply brief argument.

Date: 2/14/2019 0.0 Staff: David Y. Chung
Review and revise reply brief and legal advice regarding additional argument to be added by W. Wescott **[1.0 eliminated in the exercise of billing judgment]**; draft insert to argument to reply to argument for W. Westcott. **[1.0 eliminated in the exercise of billing judgment]**

Date: 2/14/2019 0.8 Staff: W. Lawrence Wescott
Continue drafting inserts to argument.

Date: 2/14/2019 0.0 Staff: Patrick A. Berkshire
Email exchange with co-counsel regarding reply brief status. **[0.3 eliminated in the exercise of billing judgment]**

Date: 2/15/2019 0.0 Staff: David Y. Chung
Review and edit for reply brief. **[0.3 eliminated in the exercise of billing judgment]**

Date: 2/15/2019 0.0 Staff: Patrick A. Berkshire
Review responsive brief for review of draft reply brief. **[0.9 eliminated in the exercise of billing judgment]**

Date: 2/15/2019 2.0 Staff: W. Lawrence Wescott
Draft final inserts to legal argument.

Date: 2/19/2019 0.0 Staff: Patrick A. Berkshire
Review reply brief. **[0.5 eliminated in the exercise of billing judgment]**

Date: 2/19/2019 0.3 Staff: W. Lawrence Wescott
Finalize reply brief, to include style edits to add persuasive value to legal argument.

Date: 2/19/2019 0.0 Staff: Patrick A. Berkshire
Finalize review of reply brief. **[1.0 eliminated in the exercise of billing judgment]**

Date: 5/14/2019 0.3 Staff: W. Lawrence Wescott
Teleconference with client regarding case status.

Date: 6/25/2019 0.0 Staff: David Y. Chung
Teleconference with W. Wescott regarding oral argument and preparation **[0.3 eliminated in the exercise of billing judgment]**

Date: 6/26/2019 0.3 Staff: W. Lawrence Wescott
Email exchange with D. Chung regarding oral argument and evaluate next steps.

Date: 7/3/2019 0.0 Staff: David Y. Chung
Review briefs in preparation for meeting regarding oral argument with W. Wescott. **[2.0 eliminated in the exercise of billing judgment]**

Date: 7/8/2019 0.0 Staff: David Y. Chung
Review briefs in preparation for meeting regarding oral argument and preparation for same with W. Wescott (0.5); teleconference with W. Wescott regarding oral argument and begin evaluating strategy and outline of argument. (1.0) **[Entire 1.5 eliminated in the exercise of billing judgment]**

Date: 7/8/2019 1.0 Staff: W. Lawrence Wescott
Review briefs in preparation for meeting regarding oral argument and evaluate strategy and outline of argument. (1.0)**[Additional 1.0 eliminated in the exercise of billing judgment]**

Date: 7/9/2019 0.0 Staff: W. Lawrence Wescott
Email exchange with D. Chung and P. Berkshire regarding oral argument. **[0.3 eliminated in the exercise of billing judgment]**

Date: 7/12/2019 0.0 Staff: David Y. Chung
Prepare for and participate in teleconference with P. Berkshire and W. Wescott regarding oral argument and further evaluate strategy. **[0.8 eliminated in the exercise of billing judgment]**

Date: 7/12/2019 0.0 Staff: W. Lawrence Wescott
Prepare for and participate in teleconference with P. Berkshire and D. Chung regarding oral argument and further evaluate strategy. **[0.3 eliminated in the exercise of billing judgment]**

Date: 7/12/2019 0.0 Staff: Patrick A. Berkshire
Teleconference with co-counsel regarding preparation for oral argument and further evaluate strategy. **[0.3 eliminated in the exercise of billing judgment]**

Date: 8/13/2019 0.0 Staff: David Y. Chung
Email exchange with W. Wescott regarding upcoming moot argument and compile materials for same. **[0.5 eliminated in the exercise of billing judgment]**

Date: 8/14/2019 0.0 Staff: Thomas A. Lorenzen
Review and analyze briefs in preparation for moot argument. **[3.5 eliminated in the exercise of billing judgment]**

Date: 8/14/2019 1.0 Staff: W. Lawrence Wescott
Prepare for moot argument including updating outline of argument.

Date: 8/16/2019 0.0 Staff: Patrick A. Berkshire
Draft email to co-counsel regarding moot argument. **[0.1 eliminated in the exercise of billing judgment]**

Date: 8/19/2019 1.0 Staff: W. Lawrence Wescott
Continue to prepare for moot argument including outline of argument.

Date: 8/26/2019 0.0 Staff: David Y. Chung
Review and analyze briefs in preparation for moot argument and review oral argument outline, add inserts to same. **[0.5 eliminated in the exercise of billing judgment]**

Date: 8/26/2019 0.0 Staff: Thomas A. Lorenzen
Review and analyze briefs in preparation for moot argument. **[3.0 eliminated in the exercise of billing judgment]**

Date: 8/26/2019 0.0 Staff: Patrick A. Berkshire
Review oral argument outline. **[0.8 eliminated in the exercise of billing judgment]**

Date: 8/26/2019 1.0 Staff: W. Lawrence Wescott
Prepare for moot argument, including updating outline of argument.
(1.0)**[Additional 1.0 eliminated in the exercise of billing judgment]**

Date: 8/27/2019 0.0 Staff: David Y. Chung
Prepare for moot argument, and add inserts to outline of argument. **[0.5 eliminated in the exercise of billing judgment]**

Date: 8/27/2019 0.0 Staff: Stacy A. Tromble
Review briefing and prepare for moot argument. **[1.8 eliminated in the exercise of billing judgment]**

Date: 8/28/2019 0.0 Staff: Amanda S. Berman
Review briefs and participate in moot argument. **[3.3 eliminated in the**

exercise of billing judgment]

Date: 8/28/2019 2.0 Staff: David Y. Chung

Prepare for and participate in moot.

Date: 8/28/2019 0.0 Staff: Thomas A. Lorenzen

Prepare for and participate in moot. **[3.0 eliminated in the exercise of billing judgment]**

Date: 8/28/2019 4.5 Staff: W. Lawrence Wescott

Prepare for moot argument, to include review of outline and relevant evidence (2.5) and participate in moot. (2.0)

Date: 8/28/2019 0.0 Staff: Stacy A. Tromble

Prepare for and participate in moot. **[2.7 eliminated in the exercise of billing judgment]**

Date: 8/28/2019 0.0 Staff: Patrick A. Berkshire

Prepare for and participate in moot. **[2.5 eliminated in the exercise of billing judgment]**

Date: 8/28/2019 2.0 Staff: Barton F. Stichman

Review of VA brief and initial and reply briefs and case law to prepare for moot **[1.7 eliminated in the exercise of billing judgment]**; participate in moot argument (2.0).

Date: 8/29/2019 0.8 Staff: W. Lawrence Wescott

Update oral argument outline, update legal citations.

Date: 8/30/2019 0.0 Staff: W. Lawrence Wescott

Revise oral argument and print materials for same. **[1.5 eliminated in the exercise of billing judgment]**

Date: 8/30/2019 0.0 Staff: Patrick A. Berkshire

Review oral argument outline. **[0.5 eliminated in the exercise of billing judgment]**

Date: 9/3/2019 2.5 Staff: W. Lawrence Wescott
Prepare for second moot argument, to include review and update of outline and review of relevant evidence and case citations (0.5)**[Additional 2.0 eliminated in the exercise of billing judgment]**, and participate in second moot argument. (2.0)

Date: 9/3/2019 0.0 Staff: Patrick A. Berkshire
Prepare for and participate in second moot. **[2.7 eliminated in the exercise of billing judgment]**

Date: 9/3/2019 0.0 Staff: Stacy A. Tromble
Prepare for and participate in second moot. **[3.0 eliminated in the exercise of billing judgment]**

Date: 9/4/2019 0.0 Staff: Davis Y. Chung
Draft email to W. Wescott regarding oral argument and review and revise oral argument outline. **[1.0 eliminated in the exercise of billing judgment]**

Date: 9/4/2019 0.0 Staff: W. Lawrence Wescott
Update oral argument outline and draft case summary for oral argument. **[1.5 eliminated in the exercise of billing judgment]**

Date: 9/4/2019 3.5 Staff: Patrick A. Berkshire
Draft facts outline for oral argument **[2.5 eliminated in the exercise of billing judgment]**; travel for argument (3.5); email exchange with co-counsel regarding oral argument **[0.3 eliminated in the exercise of billing judgment]**.

Date: 9/4/2019 0.0 Staff: Barton F. Stichman
Review oral argument and confer with S. Tromble and S. Hoffman regarding same. **[1.4 eliminated in the exercise of billing judgment]**

Date: 9/4/2019 0.0 Staff: Angela Nedd
Draft and file Notice of Appearance. **[0.1 eliminated in the exercise of billing judgment]**

Date: 9/5/2019 0.0 Staff: David Y. Chung
Prepare for oral argument with W. Wescott and P. Berkshire and attend same. **[3.5 eliminated in the exercise of billing judgment]**

Date: 9/5/2019 3.3 Staff: W. Lawrence Wescott
Prepare for and participate in oral argument.

Date: 9/5/2019 3.0 Staff: Patrick A. Berkshire
Prepare for and participate in oral argument.

Date: 9/6/2019 3.5 Staff: Patrick A. Berkshire
Travel from oral argument.

Date: 9/26/2019 0.0 Staff: David Y. Chung
Review Court Order for filing supplemental brief and review emails from W. Wescott and P. Berkshire regarding same. **[0.8 eliminated in the exercise of billing judgment]**

Date: 9/26/2019 0.0 Staff: W. Lawrence Wescott
Review Court Order for filing supplemental brief and begin evaluating same. **[0.3 eliminated in the exercise of billing judgment]**

Date: 9/27/2019 0.0 Staff: W. Lawrence Wescott
Draft email to P. Berkshire regarding supplemental brief. **[0.3 eliminated in the exercise of billing judgment]**

Date: 9/30/2019 0.0 Staff: W. Lawrence Wescott
Review relevant law for preparation of supplemental brief. **[1.8 eliminated in the exercise of billing judgment]**

Date: 10/1/2019 0.0 Staff: David Y. Chung
Teleconference with W. Wescott regarding supplemental brief and conduct legal research in preparation for same. **[1.3 eliminated in the exercise of billing judgment]**

Date: 10/1/2019 0.0 Staff: W. Lawrence Wescott
Teleconference with D. Chung regarding supplemental brief and review relevant law for inclusion in same. **[1.3 eliminated in the exercise of billing judgment]**

Date: 10/2/2019 0.0 Staff: W. Lawrence Wescott
Teleconference with P. Berkshire regarding research for supplemental brief. **[1.3 eliminated in the exercise of billing judgment]**

Date: 10/4/2019 0.0 Staff: Patrick A. Berkshire
Discuss joint motion with VA counsel (0.3); schedule teleconference with co-counsel (0.1); draft email to VA counsel regarding position on motion for extension to file supplemental brief (0.1); draft motion for extension to file supplemental brief (0.3). **[Entire 0.9 eliminated in the exercise of billing judgment]**

Date: 10/7/2019 0.0 Staff: David Y. Chung
Prepare for and participate in teleconference with W. Wescott and P. Berkshire regarding supplemental brief. **[0.5 eliminated in the exercise of billing judgment]**

Date: 10/7/2019 0.0 Staff: W. Lawrence Wescott
Prepare for and participate in teleconference with D. Chung and P. Berkshire regarding supplemental brief; evaluate litigation strategy. **[0.8 eliminated in the exercise of billing judgment]**

Date: 10/10/2019 0.0 Staff: Patrick A. Berkshire
Prepare for teleconference with S. Tromble and J. Niles. **[0.2 eliminated in the exercise of billing judgment]**

Date: 10/11/2019 0.0 Staff: Patrick A. Berkshire

Conduct legal research for preparation of supplemental brief. **[5.0 eliminated in the exercise of billing judgment]**

Date: 10/15/2019 0.0 Staff: Patrick A. Berkshire
Conduct legal research for preparation of supplemental brief. **[0.7 eliminated in the exercise of billing judgment]**

Date: 10/18/2019 0.0 Staff: Patrick A. Berkshire
Teleconference with VA regarding motion for stay of proceedings. **[0.4 eliminated in the exercise of billing judgment]**

Date: 10/23/2019 0.0 Staff: Stacy A. Tromble
Review RBA notes in preparation for assisting lead attorney with supplemental briefing. **[2.6 eliminated in the exercise of billing judgment]**

Date: 10/23/2019 2.0 Staff: Patrick A. Berkshire
Review and analyze RBA in preparation for supplemental brief **[1.8 eliminated in the exercise of billing judgment]**; review relevant law for preparation of supplemental brief/inclusion in supplemental brief (2.0).

Date: 10/24/2019 3.0 Staff: Patrick A. Berkshire
Draft outline for supplemental brief (2.0)**[Additional 1.5 eliminated in the exercise of billing judgment]**; continue review of relevant law/additional information for preparation for supplemental brief/inclusion in same (1.0)**[Additional 1.5 eliminated in the exercise of billing judgment]**.

Date: 11/1/2019 0.0 Staff: Patrick A. Berkshire
Conduct legal research in preparation for supplemental brief. **[2.0 eliminated in the exercise of billing judgment]**

Date: 11/4/2019 0.0 Staff: Barton F. Stichman
Outline supplemental brief argument and teleconference with P. Berkshire and S. Tromble regarding supplemental brief. **[1.1 eliminated in the exercise of billing judgment]**

Date: 11/4/2019 0.0 Staff: Christopher G. Murray
Provide legal advice to lead attorney. **[2.1 eliminated in the exercise of billing judgment]**

Date: 11/4/2019 0.0 Staff: Patrick A. Berkshire
Prepare for supplemental brief meeting (0.3); teleconference with B. Stichman and S. Tromble regarding supplemental brief (1.5); review RBA for preparation of supplemental brief (2.0). **[Entire 3.8 eliminated in the exercise of billing judgment]**

Date: 11/4/2019 0.0 Staff: Stacy A. Tromble
Prepare for and teleconference with lead attorney regarding supplemental brief. **[1.5 eliminated in the exercise of billing judgment]**

Date: 11/5/2019 3.5 Staff: Patrick A. Berkshire
Outline case history to update outline of supplemental brief argument, respond to Court question(1.0)**[Additional 1.5 eliminated in the exercise of billing judgment]**; draft email to B. Stichman concerning notice history **[0.3 eliminated in the exercise of billing judgment]**; finalize outline of supplemental brief argument **[2.5 eliminated in the exercise of billing judgment]** draft argument II of supplemental brief (2.5).

Date: 11/7/2019 0.3 Staff: W. Lawrence Wescott
Teleconference with client regarding case status.

Date: 11/7/2019 6.5 Staff: Patrick A. Berkshire
Draft Argument I for supplemental brief (2.0); draft argument II(b) of supplemental brief (2.5); draft argument III (1.0); add inserts to supplemental brief argument (1.0).

Date: 11/8/2019 0.0 Staff: W. Lawrence Wescott
Review and revise supplemental brief. **[0.5 eliminated in the exercise of billing judgment]**

Date: 11/12/2019 1.0 Staff: Patrick A. Berkshire
Email exchange with co-counsel regarding supplemental brief **[0.5 eliminated**

in the exercise of billing judgment]; finalize supplemental brief, to include inserts to argument and style edits to add persuasive value to legal argument, update legal authority (1.0)[**Additional 2.1 eliminated in the exercise of billing judgment**].

Date: 11/12/2019 0.0 Staff: Stacy A. Tromble
Review supplemental brief and add inserts to same. [**1.2 eliminated in the exercise of billing judgment**]

Date: 11/12/2019 0.0 Staff: Barton F. Stichman
Research for and prepare for review of argument I of supplemental brief. [**1.3 eliminated in the exercise of billing judgment**]

Date: 12/13/2019 0.0 Staff: Patrick A. Berkshire
Review Court Order (0.1); draft email to co-ounsel regarding same (0.1).
[**Entire 0.2 eliminated in the exercise of billing judgment**]

Date: 12/18/2019 0.0 Staff: David Y. Chung
Review Memorandum Decision and email W. Wescott regarding same. [**0.5 eliminated in the exercise of billing judgment**]

Date: 12/18/2019 0.0 Staff: Patrick A. Berkshire
Review Memorandum Decision. [**0.2 eliminated in the exercise of billing judgment**]

Date: 12/18/2019 0.5 Staff: W. Lawrence Wescott
Review Memorandum Decision and draft correspondence to client regarding same.

Date: 1/3/2020 0.0 Staff: W. Lawrence Wescott
Update internal file. [**0.5 eliminated in the exercise of billing judgment**]

Date: 1/6/2020 0.0 Staff: W. Lawrence Wescott
Update internal file. [**0.3 eliminated in the exercise of billing judgment**]

Date: 2/2/2020 0.1 Staff: Angela Nedd
Draft correspondence to client regarding case status.

Date: 2/6/2020 0.0 Staff: Angela Nedd
Finalize Notice of Appearance. **[0.1 eliminated in the exercise of billing judgment]**

Date: 2/7/2020 0.3 Staff: Christine Cote Hill
Teleconference with client regarding next steps in appeal and questions regarding same (0.3); draft email to co-counsel regarding next steps in appeal **[0.1 eliminated in the exercise of billing judgment]**.

Date: 2/7/2020 0.0 Staff: L. Michael Marquet
Draft Notice of Appearance and motion to withdraw appeal as representative in appeal. **[0.1 eliminated in the exercise of billing judgment]**

Date: 3/10/2020 0.0 Staff: Christine Cote Hill
Teleconference regarding status of appeal and next steps in appeal.

Date: 3/25/2020 5.5 Staff: Alexandra Gonsman
Draft application for reasonable attorneys' fees and expenses under the Equal Access to Justice Act (EAJA), including recitation of relevant procedural history (2.4)**[Additional 1.1 eliminated in the exercise of billing judgment]**; prepare list of itemized hours to be attached as exhibit to EAJA application (3.1).

Date: 4/2/2020 0.0 Staff: Christine Cote Hill
Add insertion to application for reasonable attorneys' fees and expenses under the EAJA, and elimination of hours in the interest of billing judgment. **[3.0 eliminated in the exercise of billing judgment]**

Date: 4/2/2020 0.0 Staff: Brianna LeFrere
Finalize application for C. Hill. **[2.0 eliminated in the exercise of billing judgment]**

CERTIFICATION

As lead counsel in this appeal, I have reviewed the combined billing statement above and I am satisfied that it accurately reflects the work performed by all counsel and others entitled to be included above and I have considered and eliminated all time that I believe could be considered excessive or redundant.


Date: April 2, 2020

/s/ Christine Cote Hill
Christine Cote Hill

EXHIBIT B

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CPI for All Urban Consumers (CPI-U)

Series Id: CUURN300SA0, CUUSN300SA0

Not Seasonally Adjusted

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

Area: South - Size Class B/C

Item: All items

Base Period: DECEMBER 1996=100

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| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Annual | HALF1 | HALF2 |
|------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| 1996 | | | | | | | | | | | | 100.0 | | | |
| 1997 | 100.3 | 100.6 | 100.9 | 101.1 | 101.0 | 101.3 | 101.3 | 101.4 | 101.5 | 101.8 | 101.9 | 101.3 | 101.2 | 100.9 | 101.5 |
| 1998 | 101.5 | 101.6 | 101.8 | 102.0 | 102.2 | 102.3 | 102.4 | 102.5 | 102.5 | 102.8 | 102.8 | 102.8 | 102.3 | 101.9 | 102.6 |
| 1999 | 102.9 | 103.0 | 103.3 | 103.9 | 104.1 | 104.1 | 104.3 | 104.4 | 104.8 | 105.1 | 105.1 | 105.2 | 104.2 | 103.6 | 104.8 |
| 2000 | 105.4 | 106.0 | 107.0 | 107.2 | 107.2 | 107.6 | 107.8 | 107.8 | 108.1 | 108.1 | 108.2 | 108.1 | 107.4 | 106.7 | 108.0 |
| 2001 | 108.6 | 109.2 | 109.4 | 109.9 | 110.1 | 110.3 | 109.8 | 109.8 | 110.2 | 109.7 | 109.4 | 108.9 | 109.6 | 109.6 | 109.6 |
| 2002 | 109.2 | 109.3 | 110.0 | 110.8 | 110.7 | 110.9 | 111.0 | 110.9 | 111.2 | 111.6 | 111.9 | 111.6 | 110.8 | 110.2 | 111.4 |
| 2003 | 111.7 | 112.5 | 113.3 | 113.3 | 112.8 | 113.1 | 113.1 | 113.4 | 113.8 | 113.6 | 113.3 | 113.3 | 113.1 | 112.8 | 113.4 |
| 2004 | 113.8 | 114.3 | 114.9 | 115.6 | 116.4 | 117.0 | 116.9 | 116.9 | 116.9 | 117.4 | 117.4 | 117.1 | 116.2 | 115.3 | 117.1 |
| 2005 | 117.1 | 117.7 | 118.4 | 119.3 | 119.4 | 119.7 | 120.2 | 120.9 | 122.3 | 122.5 | 121.4 | 121.2 | 120.0 | 118.6 | 121.4 |
| 2006 | 122.0 | 122.1 | 123.0 | 124.1 | 124.6 | 125.0 | 125.5 | 125.4 | 124.4 | 123.7 | 123.4 | 123.8 | 123.9 | 123.5 | 124.4 |
| 2007 | 123.817 | 124.521 | 125.726 | 127.000 | 127.893 | 128.265 | 128.226 | 127.833 | 128.263 | 128.600 | 129.556 | 129.368 | 127.422 | 126.204 | 128.641 |
| 2008 | 129.937 | 130.351 | 131.442 | 132.516 | 133.714 | 134.980 | 135.643 | 135.004 | 135.093 | 133.285 | 130.324 | 129.099 | 132.616 | 132.157 | 133.075 |
| 2009 | 129.615 | 130.380 | 130.873 | 131.370 | 131.777 | 133.056 | 132.736 | 132.729 | 132.722 | 133.035 | 133.342 | 133.252 | 132.074 | 131.179 | 132.969 |
| 2010 | 133.517 | 133.575 | 134.363 | 134.606 | 134.500 | 134.173 | 134.130 | 134.335 | 134.658 | 134.890 | 134.892 | 135.240 | 134.407 | 134.122 | 134.691 |
| 2011 | 135.925 | 136.625 | 138.211 | 139.177 | 139.833 | 139.639 | 139.783 | 140.378 | 140.471 | 140.303 | 140.218 | 139.838 | 139.200 | 138.235 | 140.165 |
| 2012 | 140.388 | 141.133 | 142.056 | 142.718 | 142.161 | 141.906 | 141.774 | 142.432 | 143.088 | 142.927 | 142.219 | 142.009 | 142.068 | 141.727 | 142.408 |
| 2013 | 142.543 | 143.758 | 144.293 | 143.935 | 144.071 | 144.627 | 144.851 | 145.056 | 145.098 | 144.825 | 144.377 | 144.382 | 144.318 | 143.871 | 144.765 |
| 2014 | 144.668 | 145.341 | 146.254 | 147.265 | 147.499 | 147.733 | 147.559 | 147.178 | 147.257 | 146.905 | 145.976 | 144.952 | 146.549 | 146.460 | 146.638 |
| 2015 | 143.769 | 144.591 | 145.392 | 145.939 | 146.482 | 147.126 | 147.095 | 146.695 | 146.361 | 146.314 | 145.974 | 145.378 | 145.926 | 145.550 | 146.303 |
| 2016 | 145.209 | 145.279 | 146.263 | 146.907 | 147.507 | 148.037 | 147.629 | 147.934 | 148.202 | 148.435 | 148.071 | 148.254 | 147.311 | 146.534 | 148.088 |
| 2017 | 149.312 | 149.643 | 149.675 | 149.998 | 149.962 | 150.192 | 149.951 | 150.509 | 151.547 | 151.270 | 151.121 | 150.825 | 150.334 | 149.797 | 150.871 |
| 2018 | 151.752 | 152.413 | 152.888 | 153.429 | 153.842 | 154.051 | 154.097 | 153.964 | 153.924 | 154.301 | 153.813 | 152.891 | 153.447 | 153.063 | 153.832 |
| 2019 | 153.212 | 154.019 | 155.168 | 155.916 | 155.595 | 155.687 | 156.192 | 155.873 | 155.717 | 156.136 | 156.176 | 156.171 | 155.489 | 154.933 | 156.044 |
| 2020 | 156.673 | 156.872 | | | | | | | | | | | | | |

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CPI for All Urban Consumers (CPI-U)

Series Id: CUURS35ASA0, CUUSS35ASA0

Not Seasonally Adjusted

Series Title: All items in Washington-Arlington-Alexandria, DC-VA-MD-WV, all urban consumers, not seasonally adjusted

Area: Washington-Arlington-Alexandria, DC-VA-MD-WV

Item: All items

Base Period: 1982-84=100

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|------|---------|---------|---------|---------|---------|---------|---------|---------|---------|-------|-----|-----|--------|-------|-------|
| 1996 | 156.8 | 158.4 | 159.0 | 160.1 | 160.8 | 161.2 | 161.8 | 162.4 | 162.0 | 162.8 | | | | | |
| 1997 | 161.6 | 161.9 | 162.1 | 162.9 | 163.6 | 164.9 | 165.2 | 164.5 | | | | | | | |
| 1998 | 162.5 | 163.5 | 163.6 | 164.9 | 165.2 | 164.5 | | | | | | | | | |
| 1999 | 165.4 | 165.9 | 167.0 | 168.3 | 169.8 | 169.1 | | | | | | | | | |
| 2000 | 169.8 | 173.2 | 172.5 | 174.8 | 175.0 | 175.3 | | | | | | | | | |
| 2001 | 175.9 | 177.2 | 178.0 | 179.2 | 180.9 | 179.5 | | | | | | | | | |
| 2002 | 180.0 | 181.9 | 183.6 | 184.2 | 185.8 | 185.4 | | | | | | | | | |
| 2003 | 186.3 | 188.8 | 188.7 | 190.2 | 190.8 | 190.4 | | | | | | | | | |
| 2004 | 190.7 | 192.8 | 194.1 | 195.4 | 196.5 | 197.2 | | | | | | | | | |
| 2005 | 198.2 | 200.4 | 201.8 | 202.8 | 205.6 | 204.3 | | | | | | | | | |
| 2006 | 205.6 | 206.4 | 209.1 | 211.4 | 211.2 | 210.1 | | | | | | | | | |
| 2007 | 211.101 | 214.455 | 216.097 | 217.198 | 218.457 | 218.331 | | | | | | | | | |
| 2008 | 220.587 | 222.554 | 224.525 | 228.918 | 228.871 | 223.569 | | | | | | | | | |
| 2009 | 221.830 | 222.630 | 223.583 | 226.084 | 227.181 | 226.533 | | | | | | | | | |
| 2010 | 227.440 | 228.480 | 228.628 | 228.432 | 230.612 | 230.531 | | | | | | | | | |
| 2011 | 232.770 | 235.182 | 237.348 | 238.191 | 238.725 | 238.175 | | | | | | | | | |
| 2012 | 238.994 | 242.235 | 242.446 | 241.744 | 244.720 | 243.199 | | | | | | | | | |
| 2013 | 243.473 | 245.477 | 245.499 | 246.178 | 247.838 | 247.264 | | | | | | | | | |
| 2014 | 247.679 | 249.591 | 250.443 | 250.326 | 250.634 | 249.972 | | | | | | | | | |
| 2015 | 247.127 | 249.985 | 251.825 | 250.992 | 252.376 | 251.327 | 250.664 | 249.828 | 251.500 | | | | | | |
| 2016 | 250.807 | 252.718 | 254.850 | 254.305 | 253.513 | 253.989 | 253.422 | 253.049 | 253.795 | | | | | | |
| 2017 | 254.495 | 255.435 | 255.502 | 255.518 | 257.816 | 257.872 | 256.221 | 255.332 | 257.110 | | | | | | |
| 2018 | 260.219 | 260.026 | 261.770 | 262.016 | 263.056 | 261.120 | 261.445 | 260.903 | 261.987 | | | | | | |
| 2019 | 262.304 | 264.257 | 265.967 | 265.170 | 265.500 | 265.026 | 264.777 | 264.252 | 265.301 | | | | | | |
| 2020 | 266.433 | | | | | | | | | | | | | | |

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EXHIBIT C

ATTORNEY'S FEES MATRIX — 2015-2020

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 | 2019-20 |
|----------------------------|---------|---------|---------|---------|---------|
| 31+ years | 568 | 581 | 602 | 613 | 637 |
| 21-30 years | 530 | 543 | 563 | 572 | 595 |
| 16-20 years | 504 | 516 | 536 | 544 | 566 |
| 11-15 years | 455 | 465 | 483 | 491 | 510 |
| 8-10 years | 386 | 395 | 410 | 417 | 433 |
| 6-7 years | 332 | 339 | 352 | 358 | 372 |
| 4-5 years | 325 | 332 | 346 | 351 | 365 |
| 2-3 years | 315 | 322 | 334 | 340 | 353 |
| Less than 2 years | 284 | 291 | 302 | 307 | 319 |
| Paralegals & Law Clerks | 154 | 157 | 164 | 166 | 173 |

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-

a national index, and not a local one, *cf. Eley v. District of Columbia*, (criticism of national inflation index), the PPI-OL index has historically been more reliable than other available 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. The USAO rates for years prior to and including 2014-15 remains the same as previously published on the USAO's public website.
5. 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.
6. 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).
7. The attorney's fees matrices issued by the United States Attorney's Office are intended to facilitate the settlement of attorney's fees claims in actions in which the United States may be liable to pay attorney's fees to the prevailing party and the United States Attorney's Office is handling the matter. The United States Attorney's Office is presently working with other parties to develop a revised rate schedule, based upon current, realized rates paid to attorneys handling complex federal litigation in the District of Columbia federal courts. This effort is motivated in part by the D.C. Circuit's urging that "both the plaintiff and defense sides of the bar" should "work together and think creatively about how to produce a reliable assessment of fees charged for complex federal litigation in the District." *D.L. v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019). This new matrix should address the issues identified by the majority in *D.L.*, but it is expected that it will be some time before a new matrix can be prepared. In the interim, for matters in which a prevailing party agrees to payment pursuant to the matrices issued by the United States Attorney's Office, the United States Attorney's Office will not demand that a prevailing party offer the additional evidence that the law otherwise requires. See *Eley*, 793 F.3d at 104 (quoting *Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995)) (requiring "evidence that [the] 'requested rates are in line with those prevailing in the community for similar services'").