

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

LARRY D. JAMERSON

Appellant,

v.

ROBERT L. WILKIE,

SECRETARY OF

VETERANS AFFAIRS,

Appellee

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CAVC No. 18-5183

EAJA

**APPELLANT’S APPLICATION FOR AN AWARD OF ATTORNEYS’ FEES
PURSUANT TO 28 U.S.C. § 2412(d)**

Pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d), and the Court’s Rule 39, Appellant, through counsel, seeks a total fee in the amount of **\$9,854.98**.

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); *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 ATTORNEYS' FEES

A. *The Appellant is a prevailing party*

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

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

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

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

Mr. Jamerson is a prevailing party. In this case, the Court vacated, the Board's decision denying Mr. Jamerson service connection for PTSD and remanded for further proceedings based upon the Board's error in failing to support its decision with adequate reasons and bases. *See* pages 7-9 of the Memorandum Decision. The mandate was issued on April 30, 2020. Based upon the foregoing, Mr. Jamerson is a prevailing party.

B. Appellant is eligible for an EAJA award

Mr. Jamerson 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. Jamerson had a net worth under \$2,000,000 on the date this action was commenced. *See* Paragraph 2 ("FEES AND EXPENSES") of the fee agreement filed with the Court. Therefore, Mr. Jamerson 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. As evidenced by the memorandum decision in this case, there is nothing substantially justified in the Board's failure to provide adequate reasons and bases as required under 38 U.S.C. § 7104(d)(1).

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).

Since Mr. Jamerson was ultimately successful on appeal, he may recover EAJA fees for any unsuccessful, but reasonable, arguments. *See Chesser v. West*, 11 Vet.App. 497, 503-04 (1998), quoting *Jafee v. Redmond*, 142 F.3d 409, 414 (7th Cir. 1998) ("time reasonably spent on an unsuccessful argument in support of a successful claim" is compensable, in part because to deny fees for "zealous advocacy that was appropriately provided...would be at odds with the norms of professional responsibility"). Unsuccessful arguments "made in good faith" constitute "effort reasonably expended in advancing" an appeal. *Hensley v. Principi*, 16 Vet.App. 491, 499 (2002).

One attorney, Michael W. Melito, worked on this case while at the law firm of Melito Law, LLC in Greenwood Village, Colorado, immediately neighboring Denver, Colorado to the south. Michael W. Melito graduated from The American University, Washington College of Law in 1998 and the *Laffey Matrix*¹ establishes that \$595.00 is the prevailing market rate for an attorney with his experience.

¹ 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.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021, 105 S. Ct. 3488 (1985). This Court has approved the use of the Laffey Matrix for determining the prevailing market rate for EAJA fees. *See, e.g., Wilson v. Principi*, 16 Vet. App. 509, 213 (2002) (finding the Laffey Matrix a reliable indicator of fees... particularly as to cases involving fees to be paid by government entities or determined under fee-shifting statutes"), *vacated on other grounds* by 391 F.3d 1203 (Fed. Cir. 2004); *see also Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996) (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).

Attached as Exhibit A to this fee petition are the hours worked. Appellant seeks attorneys' fees at the rate of \$217.55 per hour for Mr. Melito for representation services before the Court.² Mr. Melito has already reduced his hourly billable calculation 8.4 hours based on his professional billing judgment, leaving a total of 45.3 billable hours. Additionally, there were un-billed postage fees related to a parcel sent to the client for \$23.62. This rate per hour, multiplied by the number of hours billed, results in a total attorney fee amount of **\$9,854.98**.

I, Michael W. Melito, am the lead counsel in this case. I certify that I have reviewed this billing statement and am satisfied that it accurately reflects the work performed. As such, I hereby request that the Court grant this petition and award attorneys' fees in the amount of **\$9,854.98**.

Respectfully submitted,
Larry D. Jamerson

By His Representative,
/s/ Michael Melito
Michael W. Melito Melito Law LLC
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Greenwood Village, CO
Phone: (719) 205-1684
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²This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for the Denver-Aurora-Lakewood, CO area. *See Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the state date for the EAJA rate) to September, 2019 (270.974), the mid- point month, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181.

EXHIBIT A

Fee Detail

Date		Description	Hours	Rate	Total
1/3/2019	MWM	Drafted the Entry of appearance.	0.10	\$217.55/hr	\$0.00
1/4/2019	MWM	Introduction call.	0.50	\$217.55/hr	\$108.78
1/4/2019	MWM	Reviewed Screening Memo.	0.20	\$217.55/hr	\$0.00
1/7/2019	MWM	Call to Mentor Attorney Alexandra Curran to discuss filing EOA and discuss analysis. Correspondence	2.30	\$217.55/hr	\$500.36
1/7/2019	MWM	Text Message Correspondence to Larry NOA	0.10	\$217.55/hr	\$0.00
1/8/2019	MWM	Calls to Larry and email commo re: docs Call Mentor attorney for EOA filing and other brief strategic planning of appeal process.	0.80	\$217.55/hr	\$174.04
1/15/2019	MWM	Client conferral check in to schedule appointment with Larry. File org w/in Firm Central and review	0.30	\$217.55/hr	\$65.26
1/16/2019	MWM	Check in call to client.	0.10	\$217.55/hr	\$0.00
1/19/2019	MWM	File review and concurrent Rule 33 memo drafting. Draft/Revise	1.60	\$217.55/hr	\$348.08
1/19/2019	MWM	Rule 33 drafting and notes review	1.80	\$217.55/hr	\$391.59
1/19/2019	MWM	Concurrent Rule 33 draft/review early PM	1.60	\$217.55/hr	\$348.08
1/19/2019	MWM	Final segment drafting Rule 33 memo	1.30	\$217.55/hr	\$282.81
1/19/2019	MWM	Client conferral re memo factual discussion and accuracy check 0941,1007,1039	0.60	\$217.55/hr	\$130.53
1/19/2019	MWM	Consult with D Smith re strategic approach to arguments. 0827 hrs	0.20	\$217.55/hr	\$0.00
1/20/2019	MWM	Email with A Curren re: Court response timing	0.10	\$217.55/hr	\$0.00
1/23/2019	MWM	Phone call with Client. Brief strategy discussion re: Rule 33 memo	0.10	\$217.55/hr	\$0.00
1/24/2019	MWM	Phone call with LDJ Discovery review. Comm with AC and DS re	1.90	\$217.55/hr	\$413.34
2/1/2019	MWM	Emailed Gov't counsel to confer. No response. Call from LDJ	0.20	\$217.55/hr	\$43.51
2/2/2019	MWM	Drafted response to Court order and edited draft of Rule 33 Memo	0.80	\$217.55/hr	\$174.04

Date		Description	Hours	Rate	Total
2/4/2019	MWM	Emailed Atty Morrad again. Review filing of Atty Morris. Emailed G. Morris and conferred. RO going to examine missing pages. Redrafted Response. Log into Efiling – to file response.	1.20	\$217.55/hr	\$261.06
2/6/2019	MWM	Client conferral Calls 1552, 1638,1641 .	0.40	\$217.55/hr	\$87.02
2/7/2019	MWM	Client conferral re procedure question	0.10	\$217.55/hr	\$0.00
2/8/2019	MWM	Client calls 0941, 1007, 1039, 1128, 1519, 1857	0.50	\$217.55/hr	\$108.78
2/9/2019	MWM	Call to Mentor attorney A Curran re discussing argument 0827, 0905, 1118hrs	0.60	\$217.55/hr	\$130.53
2/9/2019	MWM	Client call conferral re facts of case 0859, 0917, 944, 1146, 1835 and 2236hrs	0.50	\$217.55/hr	\$108.78
2/9/2019	MWM	VM w/ Gov't atty S Morrad 1357hrs	0.10	\$217.55/hr	\$0.00
2/12/2019	MWM	Client conferral re case facts 1657 hrs	0.10	\$217.55/hr	\$0.00
2/15/2019	MWM	Messaging client. Phone LDJ client re: discussions over RBA and missing docs from RBA .	0.40	\$217.55/hr	\$87.02
2/16/2019	MWM	Call from Larry to say he received the RBA 1346hrs	0.10	\$217.55/hr	\$0.00
2/16/2019	MWM	Phone call from client RBA 1737	0.20	\$217.55/hr	\$43.51
2/19/2019	MWM	0710 phone from LDJ, he left vm . 753 hrs. Text message 0516hrs re: RBA 0701 hrs. Two calls out went to vm.	0.30	\$217.55/hr	\$65.26
2/25/2019	MWM	Phone calls (4) with client LDJ 2039, 1011, 0814, 0754 hrs	0.40	\$217.55/hr	\$87.02

Date		Description	Hours	Rate	Total
2/28/2019	MWM	Spoke to Client Larry Jamerson.	0.10	\$217.55/hr	\$0.00
2/28/2019	MWM	Call to LDJ re: Seattle maintains his VA records. retrieval process 1321hrs	0.10	\$217.55/hr	\$0.00
3/6/2019	MWM	Email to George Morris, VA attorney, I had not received US mail from LDJ with the missing pages. Asked if the board could reach out to the Seattle VA as the missing paperwork is in their possession	0.10	\$217.55/hr	\$0.00
3/7/2019	MWM	CLIENT CONFERENCE LDJ (PHONE) 1137, 1145 hrs	0.30	\$217.55/hr	\$65.26
3/7/2019	MWM	EMAIL TO GOVT COUNSEL RE FINDING MISSING DOCUMENTATION	0.10	\$217.55/hr	\$0.00
3/8/2019	MWM	RECEIPT OF COURT EMAIL RE PLEADING AND REVIEW OF PLEADING. GOVT REQ 15 MORE DAYS	0.10	\$217.55/hr	\$0.00
3/12/2019	MWM	PHONE CALL FROM CLIENT. DISCUSSIONS 1406 hrs 1420 hrs .	0.50	\$217.55/hr	\$108.78
3/20/2019	MWM	EMAILS WITH G MORRIS GOVT COUNSEL RE DISCOVERY FOUND AND EMAILED	0.20	\$217.55/hr	\$43.51
3/25/2019	MWM	REVIEW OF 3-25-19 FILING BY GOVT ATTY G MORRIS	0.10	\$217.55/hr	\$0.00
4/3/2019	MWM	CLIENT CONFERENCE LDJ (PHONE) 1647 hrs	0.20	\$217.55/hr	\$43.51
4/25/2019	MWM	Client conferral call 1633 hrs re case facts	0.10	\$217.55/hr	\$0.00
5/6/2019	MWM	RECEIPT OF NEWLY ISSUED JAMERSON DISCOVERY	0.20	\$217.55/hr	\$43.51

Date		Description	Hours	Rate	Total
5/27/2019	MWM	Text and quick phone Call 1126hrs update re schedule to speak with George Morris govt atty	0.10	\$217.55/hr	\$0.00
5/28/2019	MWM	CONFERENCE W/ G MORRIS RE DISPUTE AS TO RECORD SUFFICIENCY SOLVED. DOCUMENTATION 1044 hrs	0.20	\$217.55/hr	\$43.51
5/28/2019	MWM	CLIENT CONFERENCE: UPDATE RE CONFERENCE W/ G MORRIS AND NEXT PROCEDURAL STEPS OF CASE 1057hrs	0.10	\$217.55/hr	\$0.00
5/29/2019	MWM	REVIEW OF GOVT PLEADING AND STIP TO RESOLVE ORDER:	0.10	\$217.55/hr	\$0.00
5/29/2019	MWM	Client Call 1718hrs re stip w/ gov't counsel	0.10	\$217.55/hr	\$0.00
6/11/2019	MWM	Client conference re July Court conference and need for him to be available by phone 1822 hrs	0.40	\$217.55/hr	\$87.02
6/12/2019	MWM	PHONE CALL W/ LDJ 0959 hrs	0.20	\$217.55/hr	\$43.51
6/17/2019	MWM	Client conference LDJ (PHONE)	0.20	\$217.55/hr	\$43.51
6/18/2019	MWM	Client conference 0729,0731hrs	0.40	\$217.55/hr	\$87.02
6/20/2019	MWM	Phone call to client. Left voicemail	0.10	\$217.55/hr	\$0.00
6/20/2019	MWM	Client conference (Phone) 0810,0823,0836	0.10	\$217.55/hr	\$0.00
6/23/2019	MWM	Drafting, adding and editing Rule 33 memo.	2.20	\$217.55/hr	\$478.61
6/23/2019	MWM	Review of client correspondence and linking events to RBA	0.30	\$217.55/hr	\$65.26
6/24/2019	MWM	Communication Email with S Morrad re Rule 33 Memo and call to D Smith and A Curran re logistics and strategy	0.10	\$217.55/hr	\$0.00

Date		Description	Hours	Rate	Total
6/24/2019	MWM	Conferral call w/ A Curren 1529 hrs re Rule 33 questions and VM to Mentor A Curran 1222hrs	0.30	\$217.55/hr	\$65.26
6/25/2019	MWM	Phone call to court re filing technical difficulties	0.10	\$217.55/hr	\$0.00
6/25/2019	MWM	Editing final draft Adding new facts to argument	0.30	\$217.55/hr	\$65.26
6/25/2019	MWM	email to various govt parties and	0.10	\$217.55/hr	\$0.00
6/25/2019	MWM	email communication with pro bono org and mentor	0.20	\$217.55/hr	\$0.00
6/25/2019	MWM	drafting cert of service and efilng attempt (ultimately emailed to Sherry of CAVC)	0.30	\$217.55/hr	\$65.26
6/25/2019	MWM	consult w/ D Smith re Rule 33 memo and strategy	0.20	\$217.55/hr	\$43.51
6/26/2019	MWM	Client conference 1519hrs	0.30	\$217.55/hr	\$65.26
6/27/2019	MWM	Client Conference re LDJ conversation with	0.10	\$217.55/hr	\$0.00
6/28/2019	MWM	Text message and conversation with LDJ	0.10	\$217.55/hr	\$0.00
7/2/2019	MWM	Call from client re phone getting wet and need to contact him at alternate phone number on 9th 1753hrs	0.10	\$217.55/hr	\$0.00
7/8/2019	MWM	VM from client re new phone number	0.10	\$217.55/hr	\$0.00
7/9/2019	MWM	Phone call to client to discuss timing of meeting and conference with court.	0.10	\$217.55/hr	\$0.00
7/9/2019	MWM	Court Phone Conference w/ A Reynolds and Gov't Counsel S Morrad 1134hrs	0.20	\$217.55/hr	\$43.51
7/9/2019	MWM	Call to LDJ results of court conference and need to file appellate brief with court. 1145hrs	0.20	\$217.55/hr	\$43.51

Date		Description	Hours	Rate	Total
7/9/2019	MWM	Emails to and from Court Staff attorney and Gov't Attorney re logistics of conference call with court.	0.10	\$217.55/hr	\$0.00
7/10/2019	MWM	Voicemail from client	0.10	\$217.55/hr	\$0.00
7/12/2019	MWM	Voicemail from client	0.10	\$217.55/hr	\$0.00
7/18/2019	MWM	Client consult re RBA (Phone). 1639hrs	0.50	\$217.55/hr	\$108.78
7/19/2019	MWM	Quick update phone call re VM from previous day	0.10	\$217.55/hr	\$0.00
7/20/2019	MWM	Phone call LDJ 0656hrs	0.10	\$217.55/hr	\$0.00
7/26/2019	MWM	Editing Rule 33 memo and drafting of Appellate brief.	0.10	\$217.55/hr	\$0.00
7/26/2019	MWM	Quick call from client re quick filing question 1825hrs	0.10	\$217.55/hr	\$0.00
8/5/2019	MWM	Editing of appellate briefing and adding employment argument and concl. Review of RBA segments for employment argument	2.10	\$217.55/hr	\$456.86
8/6/2019	MWM	Call to mentor A Curran re discussion of appellate motion 0848 hrs	0.10	\$217.55/hr	\$0.00
8/6/2019	MWM	Adding to statement of case and summary of argument.	2.30	\$217.55/hr	\$500.36
8/7/2019	MWM	Editing draft of Appellate brief content grammar and preface	1.70	\$217.55/hr	\$369.84
8/8/2019	MWM	drafting and editing for Appellate finding.	1.10	\$217.55/hr	\$239.31
8/8/2019	MWM	Part 2 editing for Appellate finding.	2.00	\$217.55/hr	\$435.10
8/9/2019	MWM	Conferral Call D Thomas re edits 930	0.20	\$217.55/hr	\$0.00
8/9/2019	MWM	editing brief and revisions as to inconsistency of Examiner's statements 1011hrs consult	1.20	\$217.55/hr	\$261.06
8/9/2019	MWM	Revisions per court stay to format and add facts of case/section headers/standards	1.40	\$217.55/hr	\$304.57
8/9/2019	MWM	Second segment of edits per court stay and add case facts	1.00	\$217.55/hr	\$217.55
8/12/2019	MWM	email to mentor A Curran re changes	0.10	\$217.55/hr	\$0.00

Date		Description	Hours	Rate	Total
8/12/2019	MWM	editing final draft. Review of cases Stefl .2 - Nieves-Rodriguez and others	1.90	\$217.55/hr	\$413.34
8/13/2019	MWM	Client conference update re briefing and next steps of process. 0734hrs	0.30	\$217.55/hr	\$65.26
8/23/2019	MWM	Client update via phone, LDJ Text message follow ups 0749,0809	0.30	\$217.55/hr	\$65.26
8/23/2019	MWM	Review of incoming mail from LDJ	0.10	\$217.55/hr	\$0.00
9/3/2019	MWM	Call to client re logistical discussions on possible gov't reply and client info . 1027,1028	0.20	\$217.55/hr	\$43.51
9/4/2019	MWM	Follow up call to previous day VM from client re client info & logistics of govt response 0741,0746	0.10	\$217.55/hr	\$0.00
9/16/2019	MWM	VM from client 0919hrs 9-13-19-	0.10	\$217.55/hr	\$0.00
9/20/2019	MWM	LDJ phone call re update. .1624hrs 8 min	0.10	\$217.55/hr	\$0.00
10/8/2019	MWM	Call from LDJ 1040 hrs re update on case check in s	0.10	\$217.55/hr	\$0.00
10/16/2019	MWM	update client conference (phone 0626hrs) 16 min. govt' delayed filing. And text in AM	0.30	\$217.55/hr	\$65.26
10/22/2019	MWM	Client conference and update regarding timeline of govt response. 753 VM and 804hrs call.	0.10	\$217.55/hr	\$0.00
11/4/2019	MWM	Quick update 11 57 hours and 1200 hrs consecutive phone calls	0.20	\$217.55/hr	\$43.51
11/17/2019	MWM	Client text re	0.10	\$217.55/hr	\$0.00
11/25/2019	MWM	Email to client	0.10	\$217.55/hr	\$0.00
11/25/2019	MWM	Review client texts	0.10	\$217.55/hr	\$0.00

Date		Description	Hours	Rate	Total
11/26/2019	MWM	Client conference (phone and text (yesterday)) re govt brief and strategy 1645hrs Client Meeting	0.10	\$217.55/hr	\$0.00
11/29/2019	MWM	Client call 1138 hrs. traded VM Return call left VM 1532hrs	0.10	\$217.55/hr	\$0.00
11/30/2019	MWM	VM out to client 0808hrs	0.10	\$217.55/hr	\$0.00
12/1/2019	MWM	Client email of govt decision again. LDJ .	0.10	\$217.55/hr	\$0.00
12/2/2019	MWM	receipt and review of client email .	0.10	\$217.55/hr	\$0.00
12/10/2019	MWM	Client call	0.30	\$217.55/hr	\$65.26
12/12/2019	MWM	Conferral w/ A Curran re reply brief and client .	0.50	\$217.55/hr	\$108.78
12/12/2019	MWM	Client VM text reply. Call re logistics of appeal process. 1952hrs	0.40	\$217.55/hr	\$87.02
12/12/2019	MWM	Confer w/ DS re supplemental info and course of action (Split call 1225)	0.20	\$217.55/hr	\$43.51
12/13/2019	MWM	Calls from Larry 955hrs836hrs834hrs639hrs	0.10	\$217.55/hr	\$0.00
12/17/2019	MWM	Client conference re ldj called 1841hrs	0.20	\$217.55/hr	\$43.51
12/19/2019	MWM	Communication with client 1648 hrs	0.20	\$217.55/hr	\$43.51
12/19/2019	MWM	Call to client 1605 hrs. Client call @ 0945hrs also	0.20	\$217.55/hr	\$43.51
12/20/2019	MWM	Confer with Lari Jamerson. 1822 hrs.	0.10	\$217.55/hr	\$0.00
12/27/2019	MWM	Confer w/ Client via text re filing by govt of record	0.10	\$217.55/hr	\$0.00
1/2/2020	MWM	Call from govt counsel regarding no objection to addition of two missing pages 1102hrs	0.10	\$217.55/hr	\$0.00

Date		Description	Hours	Rate	Total
1/8/2020	MWM	Client call, VM call day earlier @1605	0.10	\$217.55/hr	\$0.00
1/28/2020	MWM	Update to client 1611hrs	0.40	\$217.55/hr	\$87.02
2/21/2020	MWM	Client conferral w/ LDJ 1613hrs	0.10	\$217.55/hr	\$0.00
3/4/2020	MWM	Client call 1842 hrs	0.10	\$217.55/hr	\$0.00
3/15/2020	MWM	Client phone call. LDJ left voicemail.	0.10	\$217.55/hr	\$0.00
3/18/2020	MWM	Return voicemail call from client. judge has not returned decision. 1337hrs	0.10	\$217.55/hr	\$0.00
3/21/2020	MWM	Client VM	0.10	\$217.55/hr	\$0.00
3/30/2020	MWM	Client conferral w/ LDJ.. 1310hrs	0.10	\$217.55/hr	\$0.00
3/30/2020	MWM	Client conferral w/ LDJ. 1310hrs	0.10	\$217.55/hr	\$0.00
4/14/2020	MWM	Client LDJ conferral check in. 1459 hrs	0.10	\$217.55/hr	\$0.00
4/30/2020	MWM	Review of court opinion	0.20	\$217.55/hr	\$43.51
4/30/2020	MWM	EMail to mentor re judgment and mandate.	0.10	\$217.55/hr	\$0.00
4/30/2020	MWM	Client conferral re Remand order and next steps 0709hrs	0.20	\$217.55/hr	\$43.51
5/7/2020	MWM	Conferral Client LDJ 1437hrs re next step and drafting letter on conclusion of representation	0.50	\$217.55/hr	\$108.78
5/7/2020	MWM	Conferral DS esq 1540 hrs	0.20	\$217.55/hr	\$43.51
5/12/2020	MWM	Client VM x2 1526hrs, 1528hrs	0.10	\$217.55/hr	\$0.00
5/12/2020	MWM	EAJA drafting. CPI-U online research	0.40	\$217.55/hr	\$0.00

Date		Description	Hours	Rate	Total
5/13/2020	MWM	Client conferral 0908hrs	0.40	\$217.55/hr	\$0.00
			Hours Total	53.70	Fee Total \$9,854.98

Expense Detail

Date		Description	Quantity	Rate	Total
2/15/2019	MWM	Postage to mail RBA to L Jamerson 23.62 Postage	0	\$23.62	NB
			Expenses Total	\$0.00	

EXHIBIT B

USAO 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 feeshifting 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
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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. 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'").
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