

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

GENERAL WEBB)	
Appellant,)	
)	
v.)	CAVC No. 18-966
)	EAJA
)	
ROBERT L. WILKIE,)	
SECRETARY OF)	
VETERANS AFFAIRS,)	
Appellee)	

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

Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), and the Court's Rule 39, Appellant, through counsel, seeks a total fee in the amount of **\$27,996.90**.

The basis for the application is as follows:

Grounds for an Award

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

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

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

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

A. *The Appellant Is a Prevailing Party*

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

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

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

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

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

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

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

The Appellant in the instant matter is a prevailing party. After oral argument, in a precedential decision, the Court vacated and remanded the Board's December 29, 2017 decision based upon the Board's failure to provide an adequate statement of reasons or bases; specifically, based upon the Board's failure to make necessary factual findings. See pages 1-11 of the Decision. The mandate was issued on June 17, 2020. Based upon the foregoing, and because the three-part test promulgated in *Blue* is satisfied, Appellant is a prevailing party.

B. Appellant Is Eligible For An EAJA Award

Appellant also satisfies the EAJA requirement that his net worth at the time his appeal was filed did not exceed \$2,000,000. 28 U.S.C. § 2412(d)(2)(B). Mr. Webb had a net worth under \$2,000,000 on the date this action was commenced. See Paragraph 3 of the fee agreement filed with the Court. Therefore, Mr. Webb is a person eligible to receive an award under the EAJA.

C. The Position of the Secretary Was Not Substantially Justified

In *White v. Nicholson*, 412 F.3d 1314 (Fed. Cir. 2004) the Federal Circuit applied the totality of the circumstances test and noted that "EAJA requires that the record must supply the evidence of the Government's substantial justification." 412 F.3d at 1316. The Secretary's position during proceedings before the Agency and

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

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

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

Nine attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Nicholas Phinney, Danielle M. Gorini, Lisa Ioannilli, Maura Clancy, Christian McTarnaghan, Dvora Louria, Alyse Galoski, Barbara Cook, and Zachary Stolz.¹ Attorney Nicholas Phinney graduated from Roger Williams

¹"There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the

University Law School in 2007 and the *Laffey* Matrix establishes that \$510.00 is the prevailing market rate for an attorney with his experience.² Danielle Gorini

same work and are being compensated for the distinct contribution of each lawyer.” *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1301 (11th Cir. 1988); *see also* *Baldrige v. Nicholson*, 19 Vet.App. 227, 237-38 (2005) (“the fees sought must be ‘based on the distinct contribution of each individual counsel.’”). “The use in involved litigation of a team of attorneys who divide up the work is common today for both plaintiff and defense work.” *Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) *holding modified by* *Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). “Careful preparation often requires collaboration and rehearsal[.]” *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998). As demonstrated in Exhibit A, each attorney involved in the present case provided a distinct, and non-duplicative contribution to the success of the appeal. *See* *Baldrige*, 19 Vet.App. at 237 (“An application for fees under EAJA where multiple attorneys are involved must also explain the role of each lawyer in the litigation and the tasks assigned to each, thereby describing the distinct contribution of each counsel.”). The Exhibit A in this case is separated into two documents as our firm began transitioning to a new time keeping program on October 1, 2018.

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

graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$510.00 is the prevailing market rate for an attorney with her experience. Lisa Ioannilli graduated from George Washington University Law School in 2009 and the *Laffey* Matrix establishes that \$510.00 is the prevailing market rate for an attorney with her experience. Maura Clancy graduated from Roger Williams University Law School in 2014 and the *Laffey* Matrix establishes that \$372.00 is the prevailing market rate for an attorney with her experience. Christian McTarnaghan graduated from Suffolk University Law School in 2014 and the *Laffey* Matrix establishes that \$372.00 is the prevailing market rate for an attorney with his experience. Dvora Louria graduated from University of Connecticut Law School in 2016 and the *Laffey* Matrix establishes that \$365.00 is the prevailing market rate for an attorney with her experience. Alyse Galoski graduated from Roger Williams University Law School in 2014 and the *Laffey* Matrix establishes that \$372.00 is the prevailing market rate for an attorney with her experience. Barbara Cook graduated from University of Michigan Law School in 1977 and the *Laffey* Matrix establishes that \$637.00 is the prevailing market rate for an attorney with her experience. Zachary Stolz graduated from the University of Kansas School of Law in 2005 and the *Laffey*

Matrix establishes that \$510.00 is the prevailing market rate for an attorney with his experience.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$204.78 per hour for Mr. Phinney, Ms. Gorini, Ms. Ioannilli, Ms. Clancy, Mr. McTarnaghan, Ms. Louria, Ms. Galoski, and Mr. Stolz for representation services before the Court.³ This rate per hour, multiplied by the number of hours billed for these eight attorneys (151.30) results in a total attorney's fee amount of \$30,983.27.

Appellant seeks attorney's fees at the rate of \$198.01 per hour for Ms. Cook's representation services before the Court.⁴ This rate per hour, multiplied by the number of hours billed for Ms. Cook (1.80) results in a total attorney's fee

³This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. See *Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to September 2018 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).

⁴ Per the agreement in *Bradley v. Wilkie*, 17-3797, this rate was determined using the formula proposed by the National Veterans Legal Services Program, Veterans Benefit Manual, [1683] (Barton Stichman et al. eds. 2017-18 ed.). Specifically, the hourly rate is determined using the \$193.83 hourly rate from the last month the Cincinnati Consumer Price Index-U was available in the second half of 2017, multiplying that number using the Midwest Consumer Price Index-U for the midpoint in the case, September 2018, divided by the data from the Midwest Consumer Price Index-U for December 2017 or 230.548.

amount of \$356.42.

In addition, Appellant seeks reimbursement for the following expenses:

Postage:	\$5.42
Airfare to and from MI – CMC:	\$285.80
Airfare to and from MI – Dvora:	\$296.06
Hotel in MI – CMC:	\$330.40
Hotel in MI – Dvora:	\$364.00
Travel Expenses (Uber, Taxi) – CMC:	\$201.00
Travel Expenses (MBTA, Uber, Lyft – Dvora:	\$89.25

Based upon all of the foregoing, the total fee and expense amount is **\$32,911.62.** However, in the exercise of billing judgment, Appellant will voluntarily reduce the total amount by 24 hours and seek a reduced fee and expense of **\$27,996.90.**

I, Zachary M. Stolz, am the lead counsel in this case. I certify that I have reviewed the combined billing statement and am satisfied that it accurately reflects the work performed by all representatives. I have considered and eliminated all time that I believe, based upon my over ten years of practicing before this Court, is either excessive or redundant.

Respectfully submitted,
General Webb
By His Attorneys,
CHISHOLM CHISHOLM & KILPATRICK
/s/Zachary M. Stolz
321 S Main St #200
Providence, Rhode Island 02903
(401) 331-6300
Fax: (401) 421-3185

Exhibit A

		<u>Hours</u>
1/17/2018 LMI	Reviewed and annotated BVA decision and assessed for possible appeal to CAVC. Made recommendation for appeal	0.60
2/26/2018 NP	Reviewed file & appeal documents. Filed Notice of Appeal, Notice of Appearance for Z. Stolz as lead counsel, DFH & Fee Agreement with the Court. Received, reviewed, & saved Court confirmation email to the file. Updated case file.	0.10
2/27/2018 NP	Reviewed docket and confirmed proper docketing of appeal documents; updated client file	0.10
3/7/2018 DW	Drafted and filed notice of appearance, reviewed docket for procedural status, and updated client file.	0.20
3/8/2018 MJC	Prepared and e-filed notice of appearance. Updated client file.	0.10
3/23/2018 DW	Received BVA decision transmittal. Reviewed for accuracy, saved, and updated client file.	0.10
4/27/2018 DW	Received and reviewed email from court with OGC notice of appearance. Updated client file.	0.10
4/27/2018 DW	Received RBA notice, reviewed for accuracy, saved, and updated client file	0.10
5/2/2018 NP	Reviewed RBA to determine need for dispute	1.20
5/16/2018 DW	Drafted letter to client regarding the status of his appeal.	0.10
5/16/2018 DW	Received and reviewed Notice to File Brief, saved, calculated brief due date, and updated client file.	0.10

Exhibit A

			<u>Hours</u>
6/1/2018 DW	Received and reviewed PBC order, saved, calculated memo due date, and updated client file.		0.20
6/13/2018 DW	Began drafting PBC memo. Reviewed relevant examinations and Board decision and developed arguments.		1.90
6/13/2018 DW	Reviewed the RBA and added to the case map for memo and briefing purposes.		3.00
6/14/2018 DW	Completed PBC memo draft. Added an argument regarding the Veteran's lay statements.		1.80
6/18/2018 DW	Drafted letter to client regarding PBC memo.		0.10
6/18/2018 DW	Made final edits to PBC memo. Extracted the relevant pages from the RBA. Redacted confidential information. Sent email to OGC & CLS with PBC memo, and the relevant RBA pages. Prepared and e-filed Rule 33 Certificate of Service. Updated client file.		0.50
6/18/2018 MJC	Reviewed BVA decision in preparation for reviewing DJW's PBC memo. Made suggested edits to improve accuracy and clarity of arguments. Suggested the addition of case and record cites to improve legal support for arguments. Updated client file.		0.80
6/18/2018 DW	Made edits to PBC memo based on feedback from MC. Added case law and evidence, and expanded upon arguments.		1.20
7/5/2018 DW	PBC held.		0.20
7/5/2018 DW	Reviewed file, including Board's decision, evidence of record, and PBC memo, and prepared short outline for PBC.		0.40

Exhibit A

			<u>Hours</u>
7/5/2018	DW	Drafted post-PBC memo to the file summarizing issues and arguments	0.50
7/5/2018	DW	Received and reviewed email from OGC attorney regarding decision to defend. Reviewed record to gather evidence for response to OGC attorney.	0.50
7/6/2018	DW	Drafted email to OGC attorney regarding additional evidence and argument.	0.10
7/10/2018	DW	Emailed OGC attorney to follow-up regarding additional arguments. Updated client file.	0.10
7/16/2018	DW	Emailed OGC attorney to follow-up regarding the additional arguments. Updated client file.	0.10
7/16/2018	DW	Received and reviewed email from OGC attorney regarding remand discussions. Updated client file.	0.10
7/16/2018	DW	Responded to email from OGC attorney regarding remand discussions. Updated client file.	0.10
7/17/2018	DW	Calling the client to discuss the PBC. No answer. Updated client file.	0.10
7/17/2018	DW	Received and reviewed email from OGC attorney responding to additional argument. Updated client file.	0.10
7/17/2018	DW	Responded to email from OGC attorney regarding additional argument. Updated client file.	0.10
7/19/2018	DW	Calling the client again. No answer. Updated client file.	0.10
7/23/2018	DW	Completed statement of the case for the opening brief.	0.80

Exhibit A

		<u>Hours</u>
7/23/2018 DW	Began drafting statement of the case for the opening brief.	3.00
7/24/2018 DW	Made edits to opening brief	0.30
7/24/2018 DW	Drafted argument section of opening brief, issues presented for review, summary, and conclusion.	2.20
7/25/2018 DW	Drafted update letter for client.	0.10
8/15/2018 DW	Called the client's daughter and left a voicemail. Updated client file.	0.10
8/17/2018 DW	Reviewed message from client and returned his call. No answer. Updated client file.	0.10
8/17/2018 DW	Reviewed a message from the client. Called him back, and discussed the PBC and the process moving forward. Updated client file.	0.20
9/17/2018 AG	Reviewed and suggested revisions to opening brief for legal and grammatical accuracy. Made suggestions to strengthen opening brief. Updated client file.	1.60
9/18/2018 DW	Began making edits to opening brief. Changed wording and added case law.	0.70
9/19/2018 DW	Added a short, additional argument to brief.	0.80
9/20/2018 DW	Made final revisions to opening brief, checked citations to record and authority, and e-filed.	1.90
		<u>Amount</u>
		26.60 \$5,447.20

Exhibit A

Expenses

	<u>Amount</u>
Postage	5.42
Total Expenses	<u>\$5.42</u>
	<u>26.60</u> <u>\$5,452.62</u>

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Alyse Galoski	1.60	204.78	\$327.65
Dvora Walker	22.10	204.78	\$4,525.68
Lisa M Ioannilli	0.60	204.78	\$122.87
Maura Clancy	0.90	204.78	\$184.30
Nicholas Phinney	1.40	204.78	\$286.70

Exhibit A

Time from 10/1/2018 to 6/18/2020

Case No. 258201

Client: Webb, Mr. General

			<u>Hours</u>
11/19/2018	DVORA	Responded to OGC attorney regarding extension for OGC brief. Updated client file.	0.10
11/19/2018	DVORA	Received and reviewed OGC motion to extend time to file brief. Updated client file.	0.10
11/19/2018	DVORA	Received and reviewed email from OGC attorney regarding extension for OGC brief. Updated client file.	0.10
11/19/2018	DVORA	Received and reviewed Court order granting OGC motion to extend time to file brief. Updated client file.	0.10
1/3/2019	DVORA	Reviewed opening brief in preparation for receipt of VA brief, and drafted memo to file regarding arguments.	0.30
1/4/2019	DVORA	Received and reviewed email with OGC brief. Updated client file.	0.10
1/4/2019	DVORA	Reviewed OGC brief and drafted memo to file regarding arguments. Updated client file.	0.40
2/20/2019	DVORA	Conducted further review of OGC brief and drafted detailed outline for reply brief. Began drafting first section for reply brief.	1.70
2/21/2019	DVORA	Drafted conclusion for reply brief.	0.40
2/21/2019	DVORA	Completed second section of first argument for reply brief and second argument.	3.00
2/21/2019	DVORA	Completed first section of first argument for reply brief and began drafting second section.	3.00
2/22/2019	DVORA	Made edits to reply brief. Changed organization, expanded upon arguments, and reviewed Saunders.	1.20
2/25/2019	AGALOSKI	Reviewed pleadings and BVA decision to prepare for review of reply brief. Reviewed and revised reply brief for legal and grammatical accuracy. Made suggestions to strengthen reply brief. Updated client file.	2.10
2/26/2019	DVORA	Made edits to reply brief based on feedback from AG. Reframed Saunders argument and expanded upon DTA arguments.	1.70
3/1/2019	BARBARA	Reviewed draft reply, reviewed Saunders, suggested expanding argument	0.60
3/4/2019	DVORA	Made edits to reply brief. Expanded upon arguments, and edited Saunders argument.	0.70
3/4/2019	DVORA	Made final revisions to reply brief, checked citations to record and authority, and e-filed.	1.10
3/13/2019	DVORA	Received and reviewed email with record of proceedings. Updated client file.	0.10
3/13/2019	DVORA	Reviewed record of proceedings to ensure that all the necessary documents were included. Drafted and e-filed response to record of proceedings.	0.40
3/15/2019	DVORA	Received and reviewed judge assignment. Updated client file.	0.10
5/22/2019	ZACH	Email exchange with clerk's office regarding possible traveling oral argument.	0.10
5/23/2019	DVORA	Reviewed briefs to determine issues to be discussed in oral argument.	0.20
5/28/2019	DVORA	Received and reviewed Court order for oral argument. Updated client file.	0.10
5/29/2019	DVORA	Called the client and provided an update on the status of his case. Updated client file.	0.10
6/21/2019	DVORA	Received and reviewed order from Court scheduling argument. Updated client file.	0.10
7/23/2019	DVORA	Received and reviewed email from Court with OGC notice of appearance. Updated client file.	0.10
7/24/2019	CMC	Draft and file notice of appearance. Update file.	0.20
8/2/2019	CMC	Begin to review case notes and pleadings. Memo to file whether motion for clarification is necessary.	0.40
8/6/2019	BARBARA	Review and suggest edit to motion for clarification	0.10
8/6/2019	CMC	Email VA to ascertain position on motion for clarification.	0.10
8/6/2019	CMC	Review opening brief and VA's brief. Begin to draft motion for clarification.	0.70

Exhibit A

Time from 10/1/2018 to 6/18/2020

Case No. 258201

Client: Webb, Mr. General

			<u>Hours</u>
8/6/2019	CMC	Begin to prepare for oral argument. Carefully review BVA decision, and reply brief.	1.70
8/6/2019	DVORA	Discussed case with CMC. Reviewed motion for clarification and made suggestion.	0.30
8/7/2019	CMC	Finalize and file motion for clarification.	0.30
8/15/2019	CMC	Receive and review Court's grant of motion for clarification. Update client file.	0.10
8/15/2019	CMC	Continue to prepare for oral argument in light of Court's clarification. Review case law, including Saunders.	2.50
8/19/2019	CMC	Review correspondence from Vet. Note to the file	0.40
8/19/2019	CMC	Continue to prepare for first walkthrough of oral argument. Review DOJ's pleadings in Saunders. Review VA medical examinations.	2.00
8/21/2019	CMC	Continue to perform legal research on the competency of lay evidence in Vetearn's law.	2.30
8/21/2019	CMC	Continue to prepare for first walkthrough of oral argumnet. Continue to research relevant case law. Begin to review CAVC and Fed. Cir. case law on competent lay evidence.	3.00
8/21/2019	CMC	Continue to prepare for walkthrough of oral argument. Continue to perform legal research. Continue to review CAVC and Fed. Cir. case law on competent lay evidence and symptoms.	3.00
8/22/2019	CMC	Review federal register and change to DSM 5 from IV and surrounding law.	1.50
8/22/2019	CMC	Review Court's use of Saunders and the role of functional impairment in Veteran's law.	2.50
8/23/2019	CMC	Prepare for issues addressed at walkthrough. Consider the breath of a holding in this case. Review how service connection would work.	2.30
8/23/2019	CMC	Continue to prepare for first walkthrough. Continue to prepare for lay evidence questions. Participate in walkthrough.	3.00
8/23/2019	CMC	Continue to prepare for first walkthrough. Review case law involving Saunders. Review interpretation of 1110. Review DSM IV/5 argument.	3.00
8/23/2019	DVORA	Reviewed Saunders portion of pleadings to prepare for oral argument walkthrough.	0.40
8/23/2019	DVORA	Participated in OA walkthrough.	1.10
8/26/2019	CMC	Draft motion to concede IV vs 5 argument.	0.40
8/26/2019	DVORA	Reviewed motion to concede and posted case strategy note to file regarding motion.	0.20
8/28/2019	CMC	Continue to prep for first moot. Continue to work on argumnet outline. Review lay evidence cases.	2.30
8/28/2019	CMC	Prep for first moot. Review case law. Review notes from review of pleadings. Begin to create oral argument outline.	3.00
8/29/2019	CMC	Revise motion to withdraw DSM 5 issues.	0.20
8/29/2019	CMC	Continue to review and revise oral argumnet outline.	3.00
8/29/2019	CMC	Review psych regulations in preparation for frist moot. Review oral argument outline.	3.00
8/30/2019	CMC	Finalize and file notice of issue withdrawl.	0.20
8/30/2019	CMC	Participate in first moot and debrief discussions.	2.30
8/30/2019	CMC	Review oral argument plan after first moot.	2.80
8/30/2019	CMC	Final preparations for first moot. Work to memorize outline. Review record citations and evidence in support.	3.00
8/30/2019	DVORA	Called the client and provided a status update. Updated client file.	0.10
8/30/2019	DVORA	Participated in first moot.	1.00
8/30/2019	ZACH	Conducted further legal research on Saunders and cases citing it. Participated in moot as a "judge."	3.00

Exhibit A

Time from 10/1/2018 to 6/18/2020

Case No. 258201

Client: Webb, Mr. General

			<u>Hours</u>
9/4/2019	BARBARA	Review supplemental authority; suggest filing motion to strike	0.30
9/4/2019	BARBARA	Discuss motion to strike with CMC	0.40
9/4/2019	CMC	Receive and review VA's 30(b) letter.	0.20
9/4/2019	CMC	Memo to file re: motion to strike	0.40
9/5/2019	CMC	Receive and review VA's notice of appearance, Fusina. Update client file.	0.10
9/5/2019	CMC	Prepare for second moot. Review record of proceedings. Revise argument outline.	2.80
9/5/2019	DVORA	Discussed case strategy with CMC.	0.20
9/5/2019	DVORA	Reviewed service record with CMC, discussed case strategy, and completed additional service record review.	0.20
9/6/2019	BARBARA	Discuss oral argument with CMC - how to start and relief requested, look for cases where court has tossed out VA reg as contrary to statute	0.40
9/6/2019	CMC	Draft and file reponse to Secretray's 30(b) letter.	0.60
9/6/2019	CMC	Participate in final moot and debrief.	1.10
9/6/2019	CMC	Continue to revise and prepare for argument in light of second moot.	2.80
9/6/2019	CMC	Continue to prepare for final moot.	3.00
9/6/2019	DVORA	Prepared for and participated in second moot.	1.50
9/6/2019	ZACH	Prepared for and participated in moot court. Preparation included review of Secretary's 30(b) letter and relevant caselaw. Participated as a "judge."	3.00
9/7/2019	CMC	Review oral argumnet outline in preparation for oral argument.	2.00
9/7/2019	CMC	Continue to review pleadings, case law, and oral argument outline in prepartation for argument. Memo to file on oral argument strategy.	2.50
9/9/2019	CMC	Travel to airport.	1.00
9/9/2019	CMC	Continued prep for orgal argument in hotel - reviewed outline of arguments.	1.50
9/9/2019	CMC	Continued preparation for oral argument at airport -reviewed case law.	2.00
9/9/2019	CMC	Travel to MI.	3.00
9/9/2019	DVORA	Prepared binder for oral argument.	0.20
9/9/2019	DVORA	Travel to airport.	1.00
9/9/2019	DVORA	Travel to MI.	3.00
9/10/2019	CMC	Travel to law school for argument.	0.50
9/10/2019	CMC	Travel to MI airport from argument.	0.70
9/10/2019	CMC	Participate in oral argument.	1.50
9/10/2019	CMC	Travel from MI home.	3.00
9/10/2019	CMC	Final preparation for oral argument.	3.00
9/10/2019	DVORA	Travel to law school for argument.	0.50
9/10/2019	DVORA	Travel to MI airport from argument.	0.70
9/10/2019	DVORA	Travel from Boston airport to RI home.	1.00
9/10/2019	DVORA	Participate as second chair in oral argument.	1.50
9/10/2019	DVORA	Travel from MI.	3.00

Exhibit A

Time from 10/1/2018 to 6/18/2020

Case No. 258201

Client: Webb, Mr. General

			<u>Hours</u>
12/3/2019	DVORA	Called the client and discuss case status. Updated client file.	0.20
12/10/2019	DVORA	Client to discuss case status. No answer. Updated client file.	0.10
12/17/2019	DVORA	Calling client to discuss case status. No answer. Updated client file.	0.10
3/4/2020	DVORA	Called client and provided status update. Updated client file.	0.10
3/26/2020	ZACH	Reviewed Court's precedent decision, pleadings, and notes in case. Prepared letter to client concerning Court's decision. Ensured case file was updated with necessary letters, pleadings, and correspondence so that client could be properly informed of case progress, disposition, and next steps.	0.80
4/1/2020	DVORA	Tried calling client to discuss mem dec. Updated client file.	0.10
4/2/2020	DVORA	Called client and discussed mem dec. Updated client file.	0.20
4/18/2020	DVORA	Received and reviewed email with judgment. Updated client file.	0.10
4/22/2020	DVORA	Received a call from the client and discussed case status. Updated client file.	0.10
5/7/2020	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
6/11/2020	DVORA	Called the client and provided status update. Updated client file.	0.10
6/17/2020	DVORA	Received and reviewed email with mandate. Updated client file.	0.10
6/18/2020	DANIELLE	Prepared and e filed Notice of Appearance. Received, reviewed, and saved Court confirmation email. Checked docket sheet to ensure proper filing. Updated case file.	0.20
6/18/2020	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.50
6/18/2020	ZACH	Reviewed EAJA Application for proofreading purposes and to ensure billing accuracy.	0.50

Timekeeper Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
AGALOSKI	2.1	\$ 204.78	\$ 430.04
BARBARA	1.8	\$ 198.01	\$ 356.42
CMC	80.9	\$ 204.78	\$ 16,566.70
DANIELLE	1.7	\$ 204.78	\$ 348.13
DVORA	32.3	\$ 204.78	\$ 6,614.39
ZACH	7.7	\$ 204.78	\$ 1,576.81
	126.5		\$ 25,892.49

Expenses: CMC - flight to/ from MI:\$285.80
 CMC - hotel in MI: \$330.40
 Dvora -hotel in MI: \$364.00
 Dvora-flight to/ from MI:\$296.06
 CMC - travel expenses: \$201.00
 Dvora-travel expenses: \$89.25 Total: \$27,459.00

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 fee-shifting statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, or by other Department of Justice components, or in other kinds of cases. The matrix does **not** apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. A "reasonable fee" is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. *See, e.g., Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Consistent with that definition, the hourly rates in the above matrix were calculated from average hourly rates reported in 2011 survey data for the D.C. metropolitan area, which rates were adjusted for inflation with the Producer Price Index-Office of Lawyers (PPI-OL) index. The survey data comes from ALM Legal Intelligence's 2010 & 2011 Survey of Law Firm Economics. The PPI-OL index is available at <http://www.bls.gov/ppi>. On that page, under "PPI Databases," and "Industry Data (Producer Price Index - PPI)," select either "one screen" or "multi-screen" and in the resulting window use "industry code" 541110 for "Offices of Lawyers" and "product code" 541110541110 for "Offices of Lawyers." The average hourly rates from the 2011 survey data are multiplied by the PPI-OL index for May in the year of the update, divided by 176.6, which is the PPI-OL index for January 2011, the month of the survey data, and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
3. The PPI-OL index has been adopted as the inflator for hourly rates because it better reflects the mix of legal services that law firms collectively offer, as opposed to the legal services that typical consumers use, which is what the CPI-

Legal Services index measures. Although it is a national index, and not a local one, *cf. Eley v. District of Columbia*, 793 F.3d 97, 102 (D.C. Cir. 2015) (noting criticism of national inflation index), the PPI-OL index has historically been generous relative to other possibly applicable inflation indexes, and so its use should minimize disputes about whether the inflator is sufficient.

4. The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed in *Laffey v. Northwest Airlines, Inc.* 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore (DC-MD-VA-WV) area. 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'").