

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

ROLAND F. SPEAR	)	
Appellant,	)	
	)	
v.	)	CAVC No. 18-6700
	)	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 **\$24,293.27**.

The basis for the application is as follows:

**Grounds for an Award**

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

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

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

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

A. *The Appellant Is a Prevailing Party*

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

In *Zuberi v. Nicholson*, 19 Vet. App. 541 (2006), this Court explained that

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

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

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

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

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

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

In this case, the parties agreed to a joint motion to terminate the appeal in part and to a joint motion for remand. In the Joint Motion to Terminate the Appeal, Appellee agreed to award a sixty percent rating for diabetes mellitus pursuant to 38 C.F.R. § 4.119, DC 7913 effective August 5, 2013. See pages 1-6 of the Joint Motion to Terminate. The parties also agreed to a joint motion for remand based upon the Board's failure to provide an adequate statement of reasons or bases. See pages 1-7 of the JMR. 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. Spear 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. Spear 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 or the 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. The parties agreed to a joint motion to terminate the appeal in part and there is nothing substantially justified in the Board's failure to provide an adequate statement of reasons or bases. Moreover, there is no evidence that special circumstances exist in Appellant's case that would make an award of reasonable fees and expenses unjust. 28 U.S.C. § 2412(d)(1)(A).

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

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

Seven attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Stephen Capracotta, Nicholas Phinney, Maura Clancy, Amy Odom, Barbara Cook, Danielle M. Gorini, and Zachary Stolz.<sup>1</sup> Attorney Stephen

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<sup>1</sup>"There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the same work and are being compensated for the distinct contribution of each lawyer." *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1301

Capracotta 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 his experience.<sup>2</sup> Nicholas Phinney graduated from Roger Williams University Law School in 2007 and the *Laffey* Matrix establishes that \$510.00 is the

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(11th Cir. 1988); *see also* *Baldrige v. Nicholson*, 19 Vet.App. 227, 237-38 (2005)(“the fees sought must be ‘based on the district contribution of each individual counsel.’”). “The use in involved litigation of a team of attorneys who divide up work is common today for both plaintiff and defense work.” *Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) *holding modified by* *Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11<sup>th</sup> 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.”).

<sup>2</sup> The US Attorney’s Office maintains a matrix, known as the Laffey Matrix, of prevailing market rates for attorneys by the years of practice, taking into account annual price increases, pursuant to *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff’d in part by* 746 F.2d. 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021, 105 S. Ct. 3488 (1985). This Court has approved the use of the Laffey Matrix for determining the prevailing market rate for EAJA fees. *See, e.g., Wilson v. Principi*, 16 Vet.App. 509, 213 (2002) (finding the Laffey Matrix a “reliable indicator of fees...particularly as to cases involving fees to be paid by government entities or determined under fee-shifting statutes”), *vacated on other grounds by* 391 F.3d 1203 (Fed. Cir. 2004); *see also* *Sandoval*, 9 Vet. App. at 181 (using the Laffey Matrix an indicator of prevailing market rate and holding that once a prevailing market rate is established, the government has the burden of producing evidence to show that the rate is erroneous.) *See* Exhibit B (Laffey Matrix).

prevailing market rate for an attorney with his 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. Amy Odom graduated from University of Florida Law School in 2006 and the *Laffey* Matrix establishes that \$510.00 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. Danielle Gorini 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. 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.

Dalton Chapman is a paralegal for the law firm of Chisholm Chisholm & Kilpatrick who worked on this case. The Court has found that "the Laffey Matrix . . . is a reliable indicator of fees and is far more indicative of the prevailing market rate in the jurisdiction, particularly as to cases involving fees to be paid by government entities . . . ." *Wilson v. Principi*, 16 Vet.App. 509, 513 (2002). The U.S. Supreme Court in *Richlin Sec. Service Co. v. Chertoff*, 553 U.S. 571, 590

(2008), held “...that a prevailing party that satisfies EAJA other requirements may recover its paralegal fees from the Government at prevailing market rates.”

According to the Laffey Matrix, the prevailing market rate for paralegals from June 1, 2016 and after is \$173.00 per hour. Therefore, Appellant seeks fees at the rate of \$173.00 per hour for representation services before the Court for Mr.

Chapman’s time as a paralegal.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys’ fees at the rate of \$207.73 per hour for Mr. Capracotta, Mr. Phinney, Ms. Clancy, Ms. Gorini, and Mr. Stolz for representation services before the Court.<sup>3</sup> This rate per hour, multiplied by the number of hours billed for these five attorneys (60.00) results in a total attorney's fee amount of \$12,463.80.

Appellant seeks attorney’s fees at the rate of \$200.76 per hour for Ms. Cook’s representation services before the Court.<sup>4</sup> This rate per hour, multiplied by

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<sup>3</sup> This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. See *Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date of the EAJA rate), to August 2019 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181.

<sup>4</sup> Per the agreement in *Bradley v. Wilkie*, 17-3797, this rate was determined using



the number of hours billed for Ms. Cook (8.80) results in a total attorney's fee amount of \$1,766.69.

Appellant seeks attorney's fees at the rate of \$203.49 per hour for Ms. Odom's representation services before the Court.<sup>5</sup> This rate per hour, multiplied by the number of hours billed for Ms. Odom (67.80) results in a total attorney's fee amount of \$13,804.08.

Appellant seeks attorney's fees at the rate of \$173.00 per hour for Mr. Chapman's representation services before the Court. This rate per hour, multiplied by the number of hours billed for Mr. Chapman (2.10) results in a total attorney's fee amount of \$363.30.

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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, August 2019, divided by the data from the Midwest Consumer Price Index-U for December 2017 or 230.548.

<sup>5</sup> This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Washington-Arlington-Alexandria, DC-MD-VA-WV. *See Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to August 2019 the chosen midpoint date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).

Based upon the foregoing, the total fee amount is **\$28,397.87**. However, in the exercise of billing judgment, Appellant will voluntarily reduce the total fee amount by 20 hours and seek a reduced fee of **\$24,243.27**.

In addition, Appellant seeks reimbursement for the following expense:

Filing Fee: \$50.00

Based upon all of the foregoing, the total fee and expense sought is **\$24,293.27**.

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,  
Roland F. Spear  
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

Time from 10/1/2018 to 6/19/2020

**Case No. 264335**

**Client: Spear, Mr. Roland F.**

			<u><b>Hours</b></u>
11/13/2018	STEPHEN	Reviewed Board decision and conducted legal research. Recommended case for appeal to CAVC and suggested legal arguments.	0.60
11/30/2018	NICK	Reviewed file & appeal documents. Filed Notice of Appeal, Notice of Appearance for Z. Stolz as lead counsel, & Fee Agreement with the Court. Received, reviewed, & saved Court confirmation email to the file. Updated case file.	0.10
12/3/2018	NICK	Reviewed docket and confirmed Court's proper docketing of appeal documents; updated client file	0.10
12/7/2018	MCLANCY	Prepared and e-filed notice of appearance. Reviewed docket for procedural status of appeal in Court. Updated client file.	0.20
1/2/2019	MCLANCY	Received notice from Court attaching BVA decision transmittal and copy. Reviewed for accuracy and saved to case file. Updated client file.	0.10
1/22/2019	MCLANCY	Received notice from Court attaching OGC's notice of appearance. Reviewed for accuracy and saved to case file. Updated client file.	0.10
2/1/2019	MCLANCY	Received notice from Court attaching RBA certificate of service. Reviewed for accuracy and saved to case file. Calculated deadline for motion to dispute RBA. Updated client file.	0.10
2/6/2019	DCHAPMAN	Completed review of RBA for completeness and dispute purposes	1.20
2/6/2019	DCHAPMAN	Reviewed RBA to R567	0.90
2/7/2019	MCLANCY	Prepared and sent email to client regarding status of appeal in Court. Updated client file.	0.10
2/8/2019	MCLANCY	Exchanged emails with client regarding issues on appeal in Court and potential effective date of a BVA grant in the future. Updated client file.	0.30
2/11/2019	MCLANCY	Phone call with client to discuss status of appeal in Court and recent decision he received implementing the BVA grant. Documented phone call for case file.	0.50
2/11/2019	MCLANCY	Received email from client attaching recent rating decision implementing BVA grants. Reviewed for accuracy and saved decision to case file. Phone call to client to discuss the effect of the rating decision on his Court appeal. Documented phone call for case file.	0.60
2/15/2019	NICK	Drafted & filed notice of appearance & motion to dispute RBA	0.20
2/19/2019	NICK	Email from VA atty. re: RBA; reviewed RBA per email; emailed reply	0.20
3/14/2019	MCLANCY	Received notices from Court attaching OGC's notice of appearance. Reviewed for accuracy and updated case file	0.10
3/14/2019	NICK	Received and reviewed VA's latest response to RBA dispute; updated client file	0.10
3/29/2019	NICK	Received and reviewed VA's latest response to RBA dispute; updated client file	0.10
4/15/2019	MCLANCY	Prepared and sent letter to client regarding status of appeal in Court. Updated client file.	0.10
4/15/2019	NICK	Reviewed amended RBA to determine need to continue dispute; emailed VA atty. re: RBA	0.20
4/15/2019	NICK	Received and reviewed VA's final response to RBA dispute; updated client file	0.10
4/16/2019	MCLANCY	Received notice to file brief from Court. Reviewed for accuracy and saved to case file. Calculated deadline for opening brief. Updated client file.	0.10
4/23/2019	MCLANCY	Exchanged additional emails with client regarding status of appeal in Court. Updated client file.	0.10
4/23/2019	MCLANCY	Exchanged emails with client regarding status of appeal in Court. Updated client file.	0.20
5/1/2019	MCLANCY	Received PBC order from Court. Reviewed for accuracy and saved to case file. Calculated deadline for SOI. Updated client file.	0.10
5/3/2019	MCLANCY	Began to review RBA for briefing purposes. Prepared casemap for pages 1-1093. Updated client file.	2.70
5/6/2019	MCLANCY	Continued to review RBA for briefing purposes. Prepared casemap for pages 1094-2310. Updated client file.	2.60
5/6/2019	MCLANCY	Continued to review RBA for briefing purposes. Prepared casemap for pages 2311-2768 (end). Updated client file.	0.80

# Exhibit A

Time from 10/1/2018 to 6/19/2020

**Case No. 264335**

**Client: Spear, Mr. Roland F.**

			<u><b>Hours</b></u>
5/15/2019	MCLANCY	Drafted PBC memo. Finalized memo and submitted memo to OGC and CLS. Prepared and e-filed Rule 33 certificate of service. Prepared and sent letter to client regarding status of appeal in Court and enclosing copy of PBC memo. Updated client file.	2.30
5/29/2019	MCLANCY	Reviewed BVA decision, SOI, and case file notes in preparation for PBC. Participated in PBC with OGC and CLS. Prepared detailed note to case file regarding OGC's position at PBC. Phone call to client to discuss PBC outcome. Documented phone call for case file.	0.70
6/3/2019	MCLANCY	Reviewed case file notes, BVA decision, SOI, and PBC recap. Prepared detailed note to case file regarding issues to be argued in opening brief and recommending review track for brief. Updated client file.	0.50
6/4/2019	MCLANCY	Attended litigation strategy meeting and discussed issues for inclusion in opening brief.	0.10
6/4/2019	ZACH	Meeting to discuss litigation and briefing strategy.	0.10
7/27/2019	MCLANCY	Prepared outline of arguments to make in opening brief regarding IR peripheral neuropathy. Began to draft statement of the case for opening brief. Updated client file.	1.50
7/29/2019	AODOM	Reviewed notes regarding skin and PN claims; prepared memo to file regarding same.	0.50
7/29/2019	MCLANCY	Continued to draft statement of the case for opening brief. Updated client file.	3.00
7/29/2019	MCLANCY	Continued to draft statement of the case for opening brief. Updated client file.	1.10
7/30/2019	MCLANCY	Continued to draft statement of the case for opening brief. Completed the same and began to draft rating reduction argument. Updated client file.	3.00
7/30/2019	MCLANCY	Continued to draft opening brief. Discussed rating reduction argument. Prepared rough outline of arguments; continued to draft rating reduction argument. Updated client file.	3.00
7/30/2019	MCLANCY	Continued to draft arguments for opening brief, including rating reduction argument and reasons and bases argument re: IR diabetes. Updated client file.	1.70
7/31/2019	MCLANCY	Continued to draft opening brief. Completed IR diabetes argument and drafted statement of the issues and standard of review. Updated client file.	3.00
7/31/2019	MCLANCY	Continued to draft opening brief. Began to draft IR peripheral neuropathy argument. Updated client file.	2.70
8/2/2019	MCLANCY	Continued to draft peripheral neuropathy arguments for opening brief. Reviewed the RBA and casemap for evidence of severity of upper extremity symptoms and assessed the viability of an argument challenging the ratings for the same. Updated client file.	3.00
8/2/2019	MCLANCY	Continued to draft peripheral neuropathy argument, completed PN argument, and began to draft skin argument. Updated client file.	2.80
8/5/2019	MCLANCY	Continued to draft skin argument for opening brief re: separate ratings and ES referral. Performed research regarding flare-ups argument and additional research regarding separate ratings for functional losses. Updated client file.	3.00
8/5/2019	MCLANCY	Continued to draft opening brief. Completed argument sections and edited/drafted statement of the issues and summary of the argument. Made extensive edits to drafted brief to ensure compliance with page requirement. Submitted first draft of brief for review. Updated client file.	2.80
8/7/2019	AODOM	Reviewed and edited initial draft of brief, recommended some reorganization and addition of PN UE argument.	2.90
8/7/2019	MCLANCY	Reviewed recent developments in litigation in Gray and drafted memo to the file re: impact on M21 argument in opening brief	0.20
8/8/2019	AODOM	Reviewed and suggested edits to final draft.	0.80
8/8/2019	BARBARA	Review and suggest edits to draft, suggest to add Ray, suggest shortening vague definitions	1.40
8/8/2019	BARBARA	Continued reviewing opening brief re: argument about regulations not allowing VA to look at overall rating	2.20
8/8/2019	MCLANCY	Began to implement suggestions for edits to opening brief. Updated client file.	3.00
8/8/2019	MCLANCY	Continued to implement suggestions to drafted opening brief. Efiled opening brief	2.90

# Exhibit A

Time from 10/1/2018 to 6/19/2020

**Case No. 264335**

**Client: Spear, Mr. Roland F.**

			<u>Hours</u>
8/23/2019	MCLANCY	Exchanged emails with client regarding status of appeal in Court. Updated client file.	0.20
8/28/2019	MCLANCY	Listened to oral argument live in Long v. Wilkie to anticipate points to make in reply brief regarding extraschedular argument made in opening brief. Updated client file.	1.50
10/1/2019	AODOM	Prepared and filed notice of appearance; updated file.	0.20
10/14/2019	AODOM	Reviewed parties' briefs and prepared memo to file regarding reply brief strategy.	1.00
10/15/2019	AODOM	Participated in litigation strategy meeting.	0.20
12/2/2019	AODOM	Drafted argument for reply brief regarding lower extremity ratings.	0.80
12/2/2019	AODOM	Drafted schedular argument for reply brief.	1.20
12/2/2019	AODOM	Drafted argument for reply regarding separate ratings for upper extremities prior to February 2017.	1.60
12/2/2019	AODOM	Conducted legal research and drafted argument for reply that 3.344(a) applies.	3.00
12/3/2019	AODOM	Drafted skin argument for brief.	0.90
12/3/2019	BARBARA	Start to review draft reply and suggest edits	0.30
12/4/2019	BARBARA	Complete review of draft reply, suggest edits	0.60
12/5/2019	AODOM	Made final edits to reply and filed brief; updated file.	1.00
12/20/2019	MCLANCY	Exchanged emails with OGC regarding position on OGC's motion for leave to file ROP. Updated client file.	0.10
12/23/2019	AODOM	Received and reviewed Secretary's motion for leave to file ROP; updated file.	0.10
12/23/2019	AODOM	Received and reviewed Secretary's notice of appearance (Cowden); updated file.	0.10
12/26/2019	AODOM	Received and reviewed clerk's stamp order granting Secretary's motion for leave to file ROP; updated file.	0.10
1/6/2020	AODOM	Reviewed ROP for accuracy and completeness; prepared and filed response; updated file.	0.40
1/10/2020	AODOM	Received and reviewed CAVC efilng notification that Judge Meredith has been assigned; updated file.	0.10
2/26/2020	AODOM	Received and reviewed order referring case to panel; reviewed briefs to determine issues on appeal to be considered by panel; updated file.	0.50
2/27/2020	AODOM	Called client regarding status of appeal - left message; memo to file regarding same.	0.10
2/27/2020	AODOM	Emailed VAGC attorney Mark V and then Jamie C regarding motion for oral argument; updated file.	0.20
2/28/2020	AODOM	Received and reviewed CAVC order regarding oral argument; updated file.	0.10
3/2/2020	AODOM	Telephone conference with client regarding status of appeal and next steps; memo to file regarding same.	0.30
3/5/2020	AODOM	Received and reviewed order scheduling oral argument; updated file.	0.10
3/5/2020	AODOM	Prepared and finalized email to client regarding oral argument date and next steps; updated file.	0.20
3/10/2020	AODOM	Received and reviewed CAVC Order revoking order scheduling OA; updated file.	0.10
3/23/2020	AODOM	Emailed VAGC attorney regarding motion for clarification; updated file.	0.10
3/23/2020	AODOM	Emailed client regarding oral argument; updated file.	0.20
4/1/2020	AODOM	Follow up email to VAGC attorney regarding motion for clarification; updated file.	0.10
4/7/2020	AODOM	Received and reviewed supplemental pleading order; reviewed opening brief; updated file.	0.90
4/15/2020	AODOM	Began conducting legal research regarding concreteness requirement in preparation for conference regarding strategy.	0.30

# Exhibit A

Time from 10/1/2018 to 6/19/2020

**Case No. 264335**

**Client: Spear, Mr. Roland F.**

			<u>Hours</u>
4/15/2020	AODOM	Reviewed and analyzed Spokeo in preparation for drafting supplemental brief.	0.50
4/16/2020	AODOM	Prepared for and participated in supplemental briefing strategy meeting.	0.50
4/16/2020	AODOM	Continued researching Supreme Court case law regarding standing requirements.	1.50
4/16/2020	AODOM	Conducted legal research regarding Federal Circuit and CAVC case law regarding standing	2.50
4/16/2020	AODOM	Drafted supplemental memorandum of law.	2.80
4/16/2020	AODOM	Researched and analyzed Supreme Court case law regarding standing requirements.	3.00
4/16/2020	ZACH	Prepared for and participated in conversation concerning response to Court's order. Preparation included reading case cited in Order and supporting cases.	2.10
4/17/2020	AODOM	Reviewed and edited draft of supplemental brief, added notes/questions for Barb.	1.60
4/17/2020	BARBARA	Start to review draft response and suggest edits	0.40
4/18/2020	BARBARA	Review draft pleading, reviewed con law text on standing, reviewed Fed Ct cases and FC and CAVC, check for lack of standing case	2.60
4/19/2020	BARBARA	Reviewed leg hx and cases on standing, memo to the file	0.80
4/20/2020	AODOM	Email exchange with VAGC attorney regarding Secretary's motion for extension of time to file supplemental brief; updated file.	0.20
4/20/2020	AODOM	Telephone conference with VAGC attorney regarding joint motion for extension of time to file supplemental pleading, reviewed draft of same, emailed VAGC attorney with authority to file; updated file.	0.30
4/20/2020	AODOM	Drafted new Argument I	2.00
4/20/2020	AODOM	Conducted legal research in preparation for drafting new argument I for supplemental pleading.	2.00
4/21/2020	AODOM	Reviewed Court's notice of nonconforming documents; telephone conference with VAGC attorney regarding same; reviewed second joint motion as filed; updated file.	0.40
4/21/2020	AODOM	Began finalizing supplemental brief.	0.80
4/21/2020	AODOM	Conducted legal research, prepared additional edits, and reframed arguments	3.00
4/22/2020	AODOM	Receieved and reviewed Court's stamp order granting joint motion for extension; updated file.	0.10
5/5/2020	AODOM	Finalized and filed supplemental brief; updated file.	0.20
5/5/2020	AODOM	Reviewed and edited supplemental brief.	0.40
5/6/2020	AODOM	Received, reviewed, and analyzed Secretary's supplemental brief, memo to file regarding arguments raised in same, updated file.	0.50
5/11/2020	AODOM	Conducted legal research regarding public rights doctrine, Article I courts, and case or controversey requirements in preparation for oral argument.	1.70
5/26/2020	AODOM	Telephone conference with client regarding status of appeal, oral argument, and next steps. Memo to file regarding same.	0.30
5/26/2020	AODOM	Prepared for and participated in oral argument walkthrough.	2.70
5/26/2020	ZACH	Email exchange with clerk concerning oral argument.	0.20
5/26/2020	ZACH	Prepared for and participated in "walk through" of oral argument. Preparation included review of all pleadings and several cases cited in both parties' pleadings.	3.00
6/1/2020	AODOM	Participated in first moot and debriefing regarding same.	1.50
6/1/2020	AODOM	Prepared for first moot - reviewed ROP, pleadings, preapred notes.	3.00
6/1/2020	BARBARA	Prepare and file appearance; updated file	0.10
6/1/2020	BARBARA	Review and suggest edits to opening	0.40

# Exhibit A

Time from 10/1/2018 to 6/19/2020

Case No. 264335

Client: Spear, Mr. Roland F.

			<u>Hours</u>
6/2/2020	AODOM	Reviewed and analyzed Secretary's supp pleading in Chavis v. Wilkie regarding Board's jurisdiction over separate ratings.	0.30
6/2/2020	AODOM	Reviewed and analyzed Thole v. US Bank and conducted related legal research; drafted notice of supplemental authority.	2.00
6/2/2020	AODOM	Prepared timeline of facts.	3.00
6/3/2020	AODOM	Telephone conference with client regarding history of hospitalizations; memo to file regarding same.	0.20
6/3/2020	AODOM	Participated in pre-oral argument teleconference.	0.30
6/4/2020	AODOM	Participated in second moot and debriefing.	1.50
6/4/2020	AODOM	Prepared for second moot.	3.00
6/5/2020	AODOM	Drafted and sent email to VAGC regarding potential joint resolution of issues; updated file.	0.30
6/5/2020	AODOM	Telephone conference with client regarding VAGC attorney's change of position regarding DM reduction and possible next steps; prepared memo to file regarding same.	0.50
6/5/2020	AODOM	Conferences with Barb and Zach regarding Secretary's change of position and next steps; reviewed RBA to determine impact of Secretary's concession on veteran's ratings.	0.50
6/5/2020	AODOM	Telephone conference with VAGC attorney regarding secretary's change of position regarding rating reduction; received and reviewed Secretary's notice of same; updated file.	0.50
6/7/2020	AODOM	Email exchanges with client regarding proposed settlement terms and affect on current compensation payments; updated file.	0.40
6/8/2020	AODOM	Received and reviewed CAVC order cancelling oral argument; updated file regarding same.	0.10
6/8/2020	AODOM	Received and reviewed joint motion to terminate and JMPR; checked for accuracy; updated file.	0.20
6/8/2020	AODOM	Revised oral argument intro per last moot; began reviewing materials in preparation for oral argument.	0.50
6/8/2020	AODOM	Reviewed and edited joint stipulated agreement and JMPR, emailed VAGC attorney regarding same, updated file regarding same.	0.50
6/8/2020	AODOM	Telephone conferences with VAGC attorney regarding proposed motions resolving appeal; telephone conference with client regarding same and next steps; emailed Clerk of Court regarding same; updated file.	0.80
6/8/2020	AODOM	Reviewed and edited 3.156(c) argument.	3.00
6/8/2020	CMC	Review JMPR for legal accuracy and consistency.	0.30
6/15/2020	AODOM	Telephone conference with client regarding status of appeal; prepared memo to file regarding same.	0.20
6/17/2020	AODOM	Received and reviewed CAVC order granting joint motions and mandate; prepared memo to file regarding same and next steps.	0.40
6/19/2020	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
6/19/2020	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.20
6/19/2020	ZACH	Reviewed EAJA Application for proofreading purposes and to ensure billing accuracy.	0.30

## Timekeeper Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
AODOM	67.8	\$ 203.60	\$ 13,804.08

## Timekeeper Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
BARBARA	8.8	\$ 200.76	\$ 1,766.69
CMC	0.3	\$ 207.73	\$ 62.32
DANIELLE	1.4	\$ 207.73	\$ 290.82
DCHAPMAN	2.1	\$ 173.00	\$ 363.30
MCLANCY	50.9	\$ 207.73	\$ 10,573.46
NICK	1.1	\$ 207.73	\$ 228.50
STEPHEN	0.6	\$ 207.73	\$ 124.64
ZACH	5.7	\$ 207.73	\$ 1,184.06
	138.7		\$ 28,397.87

expense: Filing Fee: \$50.00

Total: \$28,447.87



## 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'").