

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

LUIS G. DE PAZ)	
Appellant,)	
)	
v.)	CAVC No. 19-1581
)	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 **\$16,359.28**.

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), 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 Court set aside and remanded the Board's December 4, 2018 decision denying an evaluation in excess of ten percent for a right knee disability based upon the Board's failure to provide an adequate statement of reasons or bases. See pages 1-7 of the Memorandum Decision. Mandate issued on July 21, 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. De Paz 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. De Paz 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. 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 Elczynyn*, 7 Vet. App. at 176-177).

Seven attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Stephen Capracotta, Maura Clancy, Kaitlyn Degnan, Alyse Galoski, John Souza, Danielle M. Gorini, and Zachary Stolz.¹ Attorney Stephen

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 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 Baldridge 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.*

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.² 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. Kaitlyn Degnan graduated from Syracuse University Law School in 2017 and the *Laffey* Matrix

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.”).

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.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 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).

establishes that \$353.00 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. 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.

John Souza is a 2019 graduate of Roger Williams University School of Law, and at the time some of his work was performed, he was admitted to practice as a non-attorney practitioner. Mr. Souza has entered his appearance in multiple cases before the Court of Appeals for Veterans Claims. The Court has found that “[I]n formulating an EAJA award to a non-attorney practitioner, once a prevailing market rate is determined for the non-attorney practitioner based on a certain skill level, reputation, and geographic area, that prevailing market rate can be adjusted over time by application of the appropriate percentage increase of the change in the appropriate consumer price index.” See *Apodackis v. Nicholson*, 19 Vet. App. 91 (2005). Therefore, based on Mr. Souza’s court experience, Appellant seeks

attorney's fees at the rate of \$173.00 per hour for representation services before the Court for his time before he was admitted to practice law on November 22, 2019. After that admittance date, Mr. Souza's billing rate as an attorney is \$319.00.

In addition, one intern, Kati Jane Childs, worked on this case. Ms. Childs graduated from Boston University Law School in 2020. 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" *See Wilson v. Principi*, 16 Vet.App. 509, 513 (2002). She has, therefore, limited the rate at which fees are claimed for those hours to the statutory rate of \$125.00 per hour plus the cost-of-living allowance ("COLA"), which is adjusted to the midpoint of when the work was performed and then voluntarily reduced. *See Levernier Constr., Inc. v. United States*, 947 F.2d 497, 504 (Fed. Cir. 1991) ("EAJA authorizes the award of the lower of either the prevailing market rate or [\$125.00] per hour plus a COLA"); *Elczyn v. Brown*, 7 Vet.App. 170, 181 (1994) ("[T]he Court will permit-and encourage-the selection of a single mid-point date, such as the date upon which an appellant's principal brief . . . is filed with the Court, as the base for calculating a cost of living increase."). Therefore, Appellant seeks attorney's fees at the rate of \$173.00 per hour for representation services before the Court for Ms. Child's time.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$207.80 per hour for Mr. Capracotta, Ms. Clancy, Ms. Degnan, Ms. Galoski, Mr. Souza after his admittance date, Ms. Gorini, and Mr. Stolz for representation services before the Court.³ This rate per hour, multiplied by the number of hours billed for these seven attorneys (55.60) results in a total attorney's fee amount of \$11,553.68.

In addition, Appellant seeks attorney's fees at the rate of \$173.00 per hour for representation services before the Court for Mr. Souza's time prior to his admittance date. This rate per hour, multiplied by the number of hours billed (25.20) results in a total attorney's fee amount of \$4,359.60.

In addition, Appellant seeks attorney's fees at the rate of \$173.00 per hour for representation services before the Court for Ms. Child's time. This rate per hour, multiplied by the number of hours billed (25.40) results in a total attorney's fee amount of \$4,394.20.

³ This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. See *Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to November 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 (1994).

Based upon the foregoing, the total fee amount is **\$20,307.48**. However, in the exercise of billing judgment, Appellant will voluntarily reduce the total fee amount by nineteen hours and seek a reduced fee of **\$16,359.28**.

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,
Luis G. De Paz
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

7/27/2020

Exhibit A

Time from 10/1/2018 to 7/27/2020

Case No. 266484**Client: De Paz, Mr. Luis G.**

			<u>Hours</u>
12/17/2018	STEPHEN	Reviewed Board decision and conducted legal research. Recommended case for appeal to CAVC and suggested legal arguments.	0.60
3/8/2019	DANIELLE	Reviewed and emailed notice of appeal to the Court. Received, reviewed, and saved Court confirmation email to the file. Updated file.	0.10
3/11/2019	DANIELLE	Reviewed and efiled notice of appearance for ZMS as lead counsel, fee agreement, and DFH. Reviewed docket to ensure proper filing and docketing. Updated file	0.10
3/12/2019	KDEGNAN	Received case assignment, prepared and efiled notice of appearance. Updated client file accordingly.	0.10
4/9/2019	KDEGNAN	Received BVA decision transmittal and copy. Reviewed for accuracy and downloaded to client file. Updated client file accordingly.	0.10
4/23/2019	KDEGNAN	Received VA Attorney Tansits notice of appearance. Downloaded to client file. updated client file accordingly.	0.10
5/10/2019	KDEGNAN	Received RBA certificate of service. Reviewed for accuracy and downloaded to client file. Updated client file accordingly.	0.10
5/20/2019	KDEGNAN	Notified RBA received and uploaded, reviewed to ensure correct BVA decision was included, and updated client file accordingly.	0.10
5/31/2019	KJANE	Reviewed screening notes and BVA decision of 12-4-2018, drafted PBC memo outline. Updated client file.	0.50
5/31/2019	MCLANCY	Prepared and e-filed notice of appearance. Reviewed docket for procedural status of appeal in Court. Updated client file.	0.20
6/7/2019	MCLANCY	Discussed case with KJC and reviewed status of RBA review for dispute purposes.	0.10
6/11/2019	KJANE	Prepared and e-filed notice of appearance, and updated case file.	0.10
6/14/2019	KJANE	Reviewed RBA, pp. 1-505, claim streams ED, psych, also treatment records VAMC West LA & Portland. Updated client file.	2.40
6/14/2019	KJANE	Reviewed case notes. Updated client file.	0.20
6/17/2019	KJANE	Reviewed RBA, pp. 4697-5849, including hearing transcript. Updated client file.	0.80
6/17/2019	KJANE	Reviewed RBA, pp. 506-4696, treatment records, procedural docs. Updated client file.	1.90
6/25/2019	KJANE	Reviewed RBA, pp. 6300-6847, VA medical records post-service, reports of knee pain. Updated client file.	2.40
6/25/2019	KJANE	Reviewed RBA, pp. 5850-6299, records of vocational rehab over decade following discharge from service. Updated client file.	2.10
6/26/2019	KJANE	Reviewed RBA, pp. 8013-9597, medical records, appeal documents, educational info, service records. Updated client file.	2.70
6/26/2019	KJANE	Reviewed RBA, pp. 6963-8012, VA medical records related to anxiety, SSA questionnaires. Updated client file.	2.10
6/26/2019	KJANE	Reviewed RBA, pp. 9598-9853, final service tx records, earlier procedural submissions. Updated client file.	1.10
6/26/2019	KJANE	Reviewed RBA, pp. 6848-6962, primarily VA medical records, bone length study, mental health/anxiety. Updated client file.	1.00
7/1/2019	KJANE	Worked on PBC memo outline, inadequate VAX examinations under Correia, inappropriate denial under Brambley. Updated client file.	1.70
7/2/2019	KJANE	Finished draft of PBC outline. Updated client file.	0.40
7/8/2019	KJANE	Prepared status letter for client regarding acceptance of RBA and explaining next steps of appeal. Updated client file.	0.20
7/9/2019	MCLANCY	Reviewed BVA decision, case file notes, and KJC's drafted PBC memo outline. Made suggestions for additional points to make in PBC memo. Updated client file.	0.60
7/15/2019	KJANE	Finished draft PBC memo, regarding increased rating for right knee, and messaged MC that draft is available for review. Updated client file.	2.90

Exhibit A

Time from 10/1/2018 to 7/27/2020

Case No. 266484

Client: De Paz, Mr. Luis G.

			<u>Hours</u>
7/22/2019	KJANE	Received and reviewed email from Court with notice to file brief. Reviewed document for accuracy. Calculated deadline to file brief. Updated client file.	0.10
7/26/2019	MCLANCY	Reviewed draft of KJC's PBC memo. Made extensive suggestions for edits to improve accuracy, clarity, and organization of draft. Updated client file.	0.90
8/2/2019	KJANE	Finished revising PBC memo, incorporating record cites for examples of functional loss per section 4.45 factors. Updated client file.	0.90
8/2/2019	KJANE	Began revising PBC memo based on MC's comments, streamlining arguments related to Sharp and Mitchell errors while including language explaining the holdings. Also began process of including more extensive recitation of evidence of record regarding Mr. De Paz's functional loss under factors outlined in 4.45. Updated client file.	1.90
8/14/2019	MCLANCY	Received PBC order from Court. Reviewed for accuracy and saved to case file. Calculated deadline for SOL. Updated client file.	0.10
8/26/2019	MCLANCY	Reviewed final draft of PBC memo. Made edits to strengthen, clarity, and reorganize arguments. Finalized and proofread memo. Submitted memo to OGC and CLS. Prepared and e-filed Rule 33 certificate of service. Prepared and sent letter to client enclosing PBC memo. Updated client file.	0.70
9/11/2019	KDEGNAN	Reviewed BVA decision and PBC memo. Held conference with VA and CLS. Drafted post conference summary to file.	0.50
9/17/2019	MCLANCY	Reviewed case file notes and PBC recap note. Prepared outline of arguments to make in opening brief and suggested review track for opening brief, in preparation for meeting to discuss litigation strategy. Updated client file.	0.30
9/17/2019	MCLANCY	Attended litigation strategy meeting, discussed issues to be argued in opening brief, and decided on review track for opening brief. Updated client file.	0.10
9/17/2019	MCLANCY	Phone call with client to discuss PBC outcome and VA's position on arguments at PBC. Documented phone call for case file.	0.30
9/30/2019	JSOUZA	Drafted notice of appearance, filed with the court, and updated client's file.	0.20
10/10/2019	JSOUZA	Began drafting brief and researching prior notes on client's case and issues; draft issues presented for review and standard of review.	2.70
10/11/2019	JSOUZA	Finished drafting the statement of the case	1.00
10/11/2019	JSOUZA	Continued working on statement of the facts for brief and drafted part of TDIU premature remand arguments.	0.70
10/11/2019	JSOUZA	Worked on statement of the case and reviewing record for evidence to include.	2.80
10/17/2019	JSOUZA	Worked on drafting brief, completed summary of argument and began working on main argument section and researching Mitchell and Sharp issues.	2.20
10/17/2019	JSOUZA	Researched DeLuca issues for brief and continued drafting argument section.	0.70
10/17/2019	JSOUZA	Continued working on brief for client's case, and finished drafting Mitchell and Sharp arguments.	1.50
10/21/2019	JSOUZA	Worked on drafting argument for Board's failure to address veteran's functional loss	0.60
10/22/2019	JSOUZA	Continued drafting brief, added additional arguments related to 38 C.F.R. sections and proofread brief for legal and grammatical errors.	2.70
10/22/2019	JSOUZA	Drafted Dela Cruz and Thompson argument for opening brief.	1.30
11/13/2019	AGALOSKI	Reviewed BVA decision and RBA to prepare for review of opening brief. Reviewed and revised opening brief for legal and grammatical accuracy. Made suggestions to strengthen opening brief. Updated client file.	3.00
11/14/2019	JSOUZA	Finished last argument for brief to include inadequate reasons or bases, and Board's failure to adequately consider Veteran's functional loss; researched DeLuca; Cullen; and Thompson cases	1.00
11/14/2019	JSOUZA	Began editing brief.	3.00

Exhibit A

Time from 10/1/2018 to 7/27/2020

Case No. 266484

Client: De Paz, Mr. Luis G.

			<u>Hours</u>
11/14/2019	JSOUZA	Continued working on editing brief brief; added English, Esteban, Kuppamala, and Morgan argument, researched separate rating arguments, and 38 C.F.R. sections 7104(a); 4.40; 4.45; and 4.71a	3.00
11/20/2019	AGALOSKI	Conducted review of revised opening brief. Made additional edits/suggestions.	0.60
11/20/2019	JSOUZA	Began implimenting addiitonal revisions to brief and researched R&B arguments to impliment.	0.50
11/21/2019	JSOUZA	Implimented additional reasons or bases language into brief and made separate rating argument discrete argument.	1.30
11/24/2019	JSOUZA	Made additional edits to include adding prejudice argument and correcting grammatical errors throughout brief.	2.30
11/25/2019	JSOUZA	Made final revisions to brief, checked citations to record and authority, and e-filed.	2.10
11/25/2019	JSOUZA	Continued implimenting edits into brief, to include English argument and reviewing entire brief for legal and grammatical errors	1.00
12/9/2019	JSOUZA	Reviewed OGC's brief, drafted the memo to client's file in preparation for litigation strategy meeting, and updated client's file.	0.80
12/9/2019	JSOUZA	Received and reviewed email with OGC's brief and updated client's file.	0.10
12/17/2019	JSOUZA	Reviewed notes on case for update on status of litigation strategy meeting.	0.10
12/26/2019	JSOUZA	Read secretary's brief for clarity on arguments, read Mitchell and Deluca case	2.10
1/3/2020	JSOUZA	Began drafting reply brief, reviewed Appellant's opening brief and OGC's brief and compared both arguments, researched Lyles case and 38 C.F.R. section 4.40	2.90
1/3/2020	JSOUZA	Began drafting reply argument to secretary's validation of December 2017 VA examination.	0.70
1/6/2020	JSOUZA	Finished drafting Esteban argument and Sharp argument, and worked on Board's inadequate reliance on April 2014 and September 2012 VA examinations.	2.70
1/6/2020	JSOUZA	Continued working on reply brief, researched Esteban, outline Esteban argument and began writing Mitchell argument for December 2017 VA examination violation.	2.40
1/7/2020	JSOUZA	Continued working on reply brief. Drafted arguments attacking Secretary's usage of Lyles and the Board's failure to address favorable evidence.	2.60
1/16/2020	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.	2.30
1/17/2020	JSOUZA	Drafted argument attacking OGC's misunderstanding of Lyles.	1.60
1/17/2020	JSOUZA	Revised argument for Secretary's misinterpretation of Sharp and implimenting reviewing attorney's suggestions to reply brief.	0.40
1/17/2020	JSOUZA	Rearched Monzingo case, began adding argument in response to OGC's assertion that the adequcy of examinations did not matter.	1.30
1/17/2020	JSOUZA	Drafted argument in reponse to OGC's brief, reviewed entire reply brief for legal and grammatical errors.	1.60
1/17/2020	JSOUZA	Reviewed proposed edits to reply brief, edited argument based on inadequate December 2017 VA examination for its failure to note where pain begins on ROM.	2.30
1/24/2020	AGALOSKI	Conducted review of revised reply brief. Made suggestions and edits to make brief more responsive and persuasive.	1.60
1/25/2020	JSOUZA	Researched Deluca case and began implimenting additional edits to reply brief.	0.60
1/26/2020	JSOUZA	Researched further Stefl and Monzingo case; edited reply brief	2.20
1/26/2020	JSOUZA	Drafted additional revisions to reply brief argument	1.50
1/27/2020	JSOUZA	Drafted argument based on board's failure to consider more than mere ROM, reviewed entire reply for legel and grammatical errors.	2.60
1/31/2020	JSOUZA	Edited Sharp argument.	2.80

Exhibit A**Time from 10/1/2018 to 7/27/2020****Case No. 266484****Client: De Paz, Mr. Luis G.**

			<u>Hours</u>
2/3/2020	JSOUZA	Made final edits to reply brief, and reviewed brief for legal and grammatical errors	0.60
2/3/2020	JSOUZA	Performed final final proofread of reply, checked citations to record and authority, and e-filed.	0.40
2/4/2020	JSOUZA	Reviewed record of proceedings, drafted response to record of proceedings and e-filed.	0.60
2/4/2020	JSOUZA	Received and reviewed notice of record of proceedings and updated client's file.	0.10
2/8/2020	JSOUZA	Received and reviewed notice of judge assignment and updated client's file.	0.10
2/19/2020	JSOUZA	Prepared and filed notice of appearance; updated file.	0.10
4/27/2020	JSOUZA	Received and reviewed memorandum decision, meom to file re: results, and updated client's file.	1.00
4/27/2020	JSOUZA	Called client and left voicemail. Note to the file	0.10
4/28/2020	JSOUZA	Called client and left voice mail. Note to the file.	0.10
4/30/2020	JSOUZA	Phone call with client about the results of court memorandum decision and updated client's file.	0.30
5/14/2020	ZACH	Reviewed Court 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.	0.70
5/19/2020	KDEGNAN	Received judgment of court. Reviewed for accuracy and downloaded to client file. Updated client file accordingly,	0.10
6/7/2020	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
6/17/2020	KDEGNAN	Discussed entrance of judgment with client.	0.20
7/22/2020	KDEGNAN	Received mandate of court. Reviewed for accuracy and downloaded to client file. Updated client file accordingly.	0.10
7/27/2020	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
7/27/2020	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.00
7/27/2020	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>
AGALOSKI	7.5	\$ 207.80	\$ 1,558.50
DANIELLE	1.4	\$ 207.80	\$ 290.92
JSOUZA	40.1	\$ 207.80	\$ 8,332.78
KDEGNAN	1.4	\$ 207.80	\$ 290.92
KJANE	25.4	\$ 173.00	\$ 4,394.20
MCLANCY	3.3	\$ 207.80	\$ 685.74
STEPHEN	0.6	\$ 207.80	\$ 124.68

Timekeeper Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
ZACH	1.3	\$ 207.80	\$ 270.14
JSOUZA	25.2	\$173.00	\$4,359.60
		Total:	\$20,307.48

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'").