

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

BRADLEY NUTTY)	
Appellant,)	
)	
v.)	CAVC No. 18-5810
)	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 **\$15,900.66**.

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 June 21, 2018 decision denying entitlement to an initial evaluation in excess of ten percent for a left knee sprain 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. Nutty 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. Nutty 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 Elczyn*, 7 Vet. App. at 176-177).

Six attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Nicholas Phinney, Dvora Louria, Kevin Medeiros, Sarah McCauley, Danielle M. Gorini, and Zachary Stolz.¹ Attorney Nicholas Phinney graduated

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.*

from Roger Williams 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 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. Kevin Medeiros graduated from Suffolk University Law School in 2015 and the *Laffey* Matrix establishes that \$365.00 is

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).

the prevailing market rate for an attorney with her experience. Sarah McCauley graduated from Suffolk University Law School in 2018 and the *Laffey Matrix* establishes that \$353.00 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.

In addition, one intern, Chris Campagno, worked on this case. Mr. Campagno graduated from Syracuse University Law School in 2019. 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). He 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 Mr. Campagno'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 \$207.60 per hour for Mr. Phinney, Ms. Louria, Mr. Medeiros, Ms. McCauley, 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 six attorneys (58.90) results in a total attorney's fee amount of \$12,227.64.

In addition, Appellant seeks attorney's fees at the rate of \$173.00 per hour for representation services before the Court for Mr. Campagnos's time. This rate

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 July 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).

per hour, multiplied by the number of hours billed (39.20) results in a total attorney's fee amount of \$6,781.60.

Based upon the foregoing, the total fee amount is **\$19,009.24**. However, in the exercise of billing judgment, Appellant will voluntarily reduce the total fee amount by fifteen hours and seek a reduced fee of **\$15,895.24**.

In addition, Appellant seeks reimbursement for the following expense:

Postage: \$5.42

Based upon all of the foregoing, Appellant seeks a total fee and expense in the amount of **\$15,900.66**.

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,
Bradley Nutty
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 7/27/2020

Case No. 263511

Client: Nutty, Mr. Bradley

				<u>Hours</u>
10/16/2018	DANIELLE	Reviewed notice of appeal and emailed same to the Court. Received, reviewed, and saved Court confirmation email to the file. Updated file.		0.10
10/18/2018	DANIELLE	Received and reviewed email from the Court re: pro se notice of appeal docketing status. Responded, saved email, updated file.		0.10
10/18/2018	DANIELLE	Reviewed file. Sent email to the Court re: no docket number for pro se notice of appeal filed. Saved email to the file and updated file.		0.10
10/19/2018	DANIELLE	Reviewed and e filed notice of appearance for ZMS as lead counsel, fee agreement, and DFH. Reviewed docket to to ensure proper filing and docketing. Updated file.		0.10
10/24/2018	SMCCAULE	Received notice that case was assigned. Prepared and e-filed notice of appearance. Receive and review email from the Court with confirmation that appearance was filed. Reviewed docket for procedural status, ensured documents were correct. Updated client file.		0.10
10/25/2018	KEVIN	Prepared and e-filed notice of appearance, reviewed docket for procedural status, received and reviewed e-mail from court confirming appearance, and updated client's case file.		0.20
11/19/2018	SMCCAULE	Receive and review emails from the Court with BVA decision transmittal and copy of BVA decision. Ensured documents were correct. Updated client file.		0.10
12/7/2018	SMCCAULE	Phone call with Veteran to ensure we had correct info on file because we received a letter back that we had mailed. Discussed case moving forward. Made memo to file outling conversation.		0.50
12/14/2018	SMCCAULE	Receive and review email from the Court with RBA certificate of service. Ensured document was correct. Updated client file.		0.10
12/14/2018	SMCCAULE	Receive and review email from the Court with VA counsel's Notice of Appearance. Updated client file.		0.10
12/17/2018	SMCCAULE	Received and reviewed notice that RBA was uploaded to file. Ensured correct BVA decision was included. Updated client file and calendar.		0.10
12/20/2018	NICK	Reviewed RBA to determine need for dispute		1.20
2/19/2019	SMCCAULE	Prepared status letter to client. Updated file.		0.10
2/25/2019	SMCCAULE	Receive and review email from the Court with Notice to File Brief. Ensured document was correct, calculated due date for brief. Updated client file and calendar.		0.10
2/28/2019	SMCCAULE	Reviewed BVA decision and screening notes, highlighted key aspects of BVA decision. Reviewed and casemapped the RBA for briefing purposes.		2.10
3/1/2019	SMCCAULE	Researched and reviewed relevant statutes, case law and briefs re: failure to attend VA examinations.		0.30
3/1/2019	SMCCAULE	Continued to review and case map the RBA for briefing purposes. Began drafting outline of arguments for memo.		3.00
3/4/2019	SMCCAULE	Completed outline of arguments.		0.40
3/10/2019	KEVIN	Review of Sarah's PBC memo outline; reviewed outline against decision and relevant evidence; made all necessary revisions and drafted memo to file re: additions/suggestions for memo.		0.50
3/11/2019	SMCCAULE	Receive and review email from the Court with PBC order. Ensured document was correct. Calculated due date for PBC memo. Checked for conflict with the PBC date. Updated client file and calendar reflect date of PBC and due dates for memo and brief.		0.10
4/9/2019	SMCCAULE	Drafted 4 pages of memo.		2.90
4/9/2019	SMCCAULE	Drafted 2 additional pages of memo.		1.50
4/10/2019	KEVIN	Conducted substantive review of Sarah's draft PBC memo for accuracy of legal arguments, organization, and flow; made necessary edits and revisions; memo to file re: edits/suggestions.		0.90
4/10/2019	SMCCAULE	Receive and review email from the Court with confirmation that Certificate of Service was filed. Updated client file.		0.10

Exhibit A

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

Case No. 263511

Client: Nutty, Mr. Bradley

			<u>Hours</u>
4/10/2019	SMCCAULE	Reviewed and incorporated KM's edits and suggestions into the memo. Prepared PBC memo and redacted RBA for submission. Emailed memo to VA counsel and CLS attorney. Prepared and e-filed Rule 33 Certificate of Service. Updated client file.	1.00
4/11/2019	SMCCAULE	Prepared letter to send to client with PBC memo. Updated client file.	0.10
4/25/2019	SMCCAULE	Reviewed PBC notes and called client. Made not to file re: no answer.	0.10
4/25/2019	SMCCAULE	Prepared for and attended PBC. Took notes on VA's position and CLS comments. Updated client file.	0.50
4/25/2019	SMCCAULE	Reviewed notes from PBC, re-reviewed PBC memo and relevant parts of the RBA to draft PBC summary. Drafted memo to file summarizing PBC, VA's position, and relevant aspects of case. Updated client file.	0.40
4/25/2019	SMCCAULE	Receive and review email from the Court with notice that PBC conference was held. Ensured date was correct. Updated client file.	0.10
5/7/2019	SMCCAULE	Called client, unable to leave voicemail. Prepared contact letter to client. Updated file.	0.10
5/15/2019	SMCCAULE	Phone call with Veteran re: conference update. Provided update on PBC and timeline of case moving forward. Drafted memo to file summarizing conversation.	0.20
6/20/2019	CCAMP	Continued research for opening brief and began drafting opening brief outline.	3.00
6/20/2019	CCAMP	Began reviewing pleadings in preparation of drafting opening brief outline.	0.50
6/20/2019	CCAMP	Continued drafting opening brief outline.	0.90
6/21/2019	CCAMP	Prepared notice of appearance and filed the same with the Court. Updated client file.	0.10
6/21/2019	CCAMP	Completed draft of opening brief outline.	0.80
6/21/2019	KEVIN	Reviewed opening brief outline and discussed briefing strategy with CC.	0.80
6/24/2019	CCAMP	Began drafting the statement of the issues for opening brief.	2.30
6/24/2019	CCAMP	Finished drafting statement of the issues for opening brief.	0.70
6/25/2019	CCAMP	Began drafting statement of the case for opening brief.	2.00
6/25/2019	CCAMP	Began drafting arguments for opening brief.	1.50
6/25/2019	CCAMP	Finished drafting statement of the case for opening brief.	1.70
6/26/2019	CCAMP	Continued drafting arguments for opening brief.	2.70
6/26/2019	CCAMP	Continued drafting arguments for opening brief.	0.30
6/26/2019	CCAMP	Completed drafting opening brief.	1.30
6/28/2019	KEVIN	Began review of CC's draft opening brief.	2.60
7/1/2019	KEVIN	Continued review of CC's draft opening brief.	3.00
7/1/2019	KEVIN	Completed review of CC's draft opening brief; memo to file re: revisions and additions	0.90
7/2/2019	CCAMP	Edited statement of the case for draft of opening brief.	2.70
7/2/2019	CCAMP	Edited instability and RSVP arguments for draft of opening brief.	2.60
7/2/2019	CCAMP	Edited R&B and inadequate exam arguments for draft of opening brief.	2.00
7/2/2019	CCAMP	Edited statement of the issues for draft of opening brief.	0.80
7/2/2019	CCAMP	Began editing draft of opening brief.	0.70
7/3/2019	CCAMP	Continued making edits to draft of opening brief.	1.40
7/3/2019	CCAMP	Edited conclusion for draft of opening brief.	2.30
7/8/2019	CCAMP	Began making addiitonal revisions to draft of opening brief.	1.10

Exhibit A

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

Case No. 263511

Client: Nutty, Mr. Bradley

			<u>Hours</u>
7/8/2019	KEVIN	Continued and completed review of edited draft of CC's opening brief.	1.80
7/8/2019	KEVIN	Began review of edited draft of CC's opening brief.	3.00
7/9/2019	CCAMP	Added DC 5259 argument to statement of issues and statement of case.	0.40
7/9/2019	CCAMP	Added DC 5259 argument to opening brief.	2.60
7/11/2019	KEVIN	Began and completed EED/tolling issue; began draft argument for inclusion in opening brief.	3.00
7/11/2019	KEVIN	Completed draft argument re: EED/tolling; memo to file.	0.40
7/12/2019	CCAMP	Edited Flare-ups / DTA argument for opening brief.	2.30
7/12/2019	CCAMP	Made final revisions to reply brief, checked citations to record and authority, and e-filed.	2.50
7/12/2019	DVORA	Discussed CMC's edits with CC.	0.30
7/12/2019	DVORA	Assisted with final revisions to opening brief.	1.40
7/12/2019	DVORA	Completed peer review of brief. Checked cites to record and authority, and made edits.	1.40
7/12/2019	KEVIN	Edit and revise SCRA argument in opening brief.	1.20
9/9/2019	SMCCAULE	Reviewed e-mail from VA counsel re: motion to extend. Replied to same. Updated client file.	0.10
9/10/2019	KEVIN	Received and reviewed OGC's motion for extension of time to file brief for accuracy and content; updated file.	0.10
9/10/2019	KEVIN	Received and reviewed Court order granting OGC's motion for extension of time for accuracy; updated file.	0.10
10/24/2019	KEVIN	Received and reviewed email with OGC brief; updated file; began review and outline of OGC brief through standard of review section.	0.50
10/29/2019	KEVIN	Completed review and outline of OGC brief; memo to file summarizing issues for review	0.60
11/5/2019	KEVIN	Discussed reply brief strategy at litigation strategy meeting.	0.10
12/12/2019	KEVIN	Outlined reply brief arguments prior to drafting reply brief.	1.50
12/16/2019	KEVIN	Began first draft of reply brief.	2.10
12/17/2019	KEVIN	Completed first draft reply brief; conducted initial proofread for flow and accuracy of spelling, grammar, citations	1.20
12/17/2019	KEVIN	Continued first draft reply brief.	3.00
12/19/2019	APRIL	Reviewed BVA decision, opening brief, and response brief to prepare for review of draft reply; reviewed draft reply for legal and factual accuracy; suggested revisions and edits for accuracy and clarity	2.00
12/19/2019	KEVIN	Reviewed AD's memo to file re: review of first draft reply brief; began second draft instituting AD's edits and suggested additions.	1.40
12/23/2019	KEVIN	Final revisions to reply brief, checked citations to record and authority, and e-filed; received and reviewed confirmation email for accuracy; updated client's file.	1.60
12/23/2019	KEVIN	Continued and completed second draft reply brief instituting AD's edits and suggested additions; submitted for proofread.	1.50
1/3/2020	KEVIN	Reviewed ROP filed by OGC; identified missing records; e-mailed OGC re: missing records; updated file.	0.80
1/6/2020	KEVIN	Reviewed amended ROP to ensure inclusion of all records cited in pleadings; prepared and e-filed acceptance of ROP; reviewed confirmation e-mail for accuracy; updated file.	0.50
1/9/2020	KEVIN	Received and reviewed notice of assignment of case to Judge Bartley for accuracy; updated file.	0.10
2/19/2020	KEVIN	Received and reviewed OGC's Notice of Appearance for attorney King-Holland, and updated file.	0.10

Exhibit A

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

Case No. 263511

Client: Nutty, Mr. Bradley

			<u>Hours</u>
4/27/2020	KEVIN	E-mailed client status update; updated file.	0.10
4/27/2020	KEVIN	Received and reviewed e-mail from client; updated file.	0.10
4/29/2020	KEVIN	Received CAVC decision; reviewed decision against pleadings to determine outcome and ensure all issues addressed; drafted detailed memo to file summarizing case history and outcome; updated file.	0.80
5/4/2020	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
5/13/2020	KEVIN	E-mailed client regarding CAVC decision; updated file.	0.10
5/13/2020	KEVIN	Received and reviewed response e-mail from client regarding CAVC decision; responded to client's e-mail; updated file.	0.10
5/21/2020	KEVIN	Received CAVC's entry of judgment and reviewed for accuracy and content; updated file.	0.10
6/7/2020	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
7/15/2020	KEVIN	E-mailed client regarding imminent entry of mandate; updated file.	0.10
7/16/2020	KEVIN	Received and responded to client's return e-mail regarding mandate and next steps; updated file.	0.30
7/17/2020	KEVIN	Received, reviewed, and responded to e-mail from client; updated file.	0.10
7/21/2020	KEVIN	Received and reviewed CAVC entry of mandate for accuracy and content; updated file.	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.	1.10
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>
APRIL	2.0	\$ 207.60	\$ 415.20
CCAMP	39.2	\$ 173.00	\$ 6,781.60
DANIELLE	1.7	\$ 207.60	\$ 352.92
DVORA	3.1	\$ 207.60	\$ 643.56
KEVIN	35.4	\$ 207.60	\$ 7,349.04
NICK	1.2	\$ 207.60	\$ 249.12
SMCCAULE	14.2	\$ 207.60	\$ 2,947.92
ZACH	1.3	\$ 207.60	\$ 269.88
	98.1		\$ 19,009.24

Expense: Postage: \$5.42

Total: \$19,014.66

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'").