

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

EDWARD S. AREL	)	
Appellant,	)	
	)	
v.	)	CAVC No. 19-58
	)	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 **\$10,993.85**.

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).

The Court set aside and remanded the Board's November 21, 2018 decision based upon the Board's failure to provide an adequate statement of reasons or bases and based upon its failure to rely on an adequate VA examination. 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. Arel 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. Arel 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. There thus is nothing substantially justified in the Board's failure to provide an adequate statement of reasons or bases or in its failure to rely on an adequate VA examination. 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).

Eight attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Emma Peterson, Nicholas Phinney, Jenna Zellmer, April Donahower, Sarah O'Brien, Maura Clancy, Danielle M. Gorini, and Zachary Stolz.<sup>1</sup> Attorney Emma Peterson graduated from Roger Williams University Law

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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 (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 work is common today for both plaintiff and defense work." *Johnson v.*

School in 2011 and the *Laffey* Matrix establishes that \$433.00 is the prevailing market rate for an attorney with her 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 prevailing market rate for an attorney with his experience. Jenna Zellmer graduated from Boston University Law School in 2013 and the *Laffey* Matrix establishes that \$372.00 is the prevailing market rate for an attorney with

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*Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) *holding modified by Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). Careful preparation often requires collaboration and rehearsal [.]” *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998). As demonstrated in Exhibit A, each attorney involved in the present case provided a distinct, and non-duplicative contribution to the success of the appeal. *See Baldridge*, 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.”). In this case, Sarah McCauley and Sarah O’Brien are the same attorney.

<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).

her experience. April Donahower graduated from Temple University Law School in 2013 and the *Laffey* Matrix establishes that \$372.00 is the prevailing market rate for an attorney with her experience. Sarah O'Brien 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. 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. 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 Ms. Peterson, Mr. Phinney, Ms. Zellmer, Ms. Donahower, Ms. O’Brien, 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 eight attorneys (52.10) results in a total attorney's fee amount of \$10,822.75.

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 (0.70) results in a total attorney's fee amount of \$121.10.

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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 (1994).



In addition, Appellant seeks reimbursement for the following expense:

Filing Fee: \$50.00

Based upon the foregoing, the total fee sought is **\$10,993.85**.

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,  
Edward S. Arel  
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. 265100

Client: Arel, Mr. Edward S.

			<u>Hours</u>
12/5/2018	EMMA	Received Board decision, researched caselaw, recommended an appeal to CAVC, and proposed legal arguments.	0.60
1/4/2019	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
1/8/2019	NICK	Confirmed Court's docketing of appeal; updated client file	0.10
1/23/2019	MCLANCY	Prepared and e-filed notice of appearance. Reviewed docket for procedural status of appeal in Court. Updated client file.	0.20
2/5/2019	MCLANCY	Received notice from Court attaching BVA decision transmittal and copy. Reviewed for accuracy and saved to case file. Updated client file.	0.10
2/22/2019	MCLANCY	Received notice from Court attaching OGC's notice of appearance. Reviewed for accuracy and saved to case file. Updated client file.	0.10
3/11/2019	MCLANCY	Received notice from Court attaching RBA certificate of service. Reviewed for accuracy and saved to case file. Calculated deadline for RBA dispute/response. Updated client file.	0.10
3/15/2019	DCHAPMAN	Reviewed RBA for completeness	0.70
3/29/2019	MCLANCY	Prepared and sent letter to client regarding status of appeal in Court. Updated client file.	0.10
4/2/2019	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
4/17/2019	MCLANCY	Received and reviewed email from OGC requesting to reschedule PBC. Exchanged emails with OGC and CLS regarding availability to reschedule PBC. Updated client file.	0.20
4/17/2019	MCLANCY	Received notice from Court attaching OGC's motion to reschedule PBC. Reviewed for accuracy and saved to case file. Updated client file.	0.10
4/17/2019	MCLANCY	Received PBC order from Court. Reviewed for accuracy and saved to case file. Calculated deadline for SOI. Updated client file.	0.10
4/19/2019	MCLANCY	Received order from Court granting OGC's motion to reschedule PBC. Reviewed for accuracy and saved to case file. Updated client file with new SOI deadline, brief deadline, and PBC date and time.	0.10
5/2/2019	MCLANCY	Reviewed RBA for briefing purposes. Prepared casemap for RBA. Began to outline issues for inclusion in PBC. Updated client file.	1.70
5/2/2019	MCLANCY	Began to draft PBC memo. Updated client file.	1.10
5/9/2019	MCLANCY	Continued to draft PBC memo. Noted additional arguments to include in opening brief. Completed, proofread, and finalized PBC 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.	1.40
5/23/2019	MCLANCY	Phone call with client to discuss PBC outcome and timeline for submission of opening brief. Documented phone call for case file.	0.20
5/23/2019	MCLANCY	Reviewed case file notes, BVA decision, and SOI in preparation for PBC. Participated in PBC with OGC and CLS. Prepared detailed note to case file regarding PBC outcome, in preparation for discussing PBC outcome with client. Updated client file.	0.60
5/23/2019	MCLANCY	Researched the IOM report on hearing loss and tinnitus and memorandum decisions referencing the report. Reviewed favorable memorandum decision and prepared summary of the same. Prepared and sent email to OGC and CLS regarding favorable memorandum decision and its impact on this appeal and requested reconsideration of PBC defend. Updated client file.	0.60
5/28/2019	MCLANCY	Attended litigation strategy meeting, discussed issues to be argued in brief, and decided on review track for brief. Updated client file.	0.10
5/28/2019	MCLANCY	Reviewed case file notes, BVA decision, and PBC recap note in preparation for drafting litigation strategy note to case file. Prepared note to case file in preparation for litigation strategy meeting, outlining issues for inclusion in opening brief. Updated client file.	0.40
5/28/2019	ZACH	Participated in meeting concerning litigation and briefing strategy.	0.10

## Exhibit A

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

Case No. 265100

Client: Arel, Mr. Edward S.

			<u>Hours</u>
6/17/2019	MCLANCY	Prepared and sent follow-up email to OGC regarding potential JMR negotiations. Updated client file.	0.10
6/17/2019	MCLANCY	Exchanged additional emails with OGC regarding potential JMR negotiations. Updated client file.	0.10
6/18/2019	MCLANCY	Exchanged additional emails with OGC regarding potential JMR negotiations. Updated client file.	0.10
7/22/2019	MCLANCY	Reviewed case file notes, case map, and BVA decision in preparation for drafting opening brief. Began to draft statement of the case for opening brief. Updated client file.	1.30
7/22/2019	MCLANCY	Continued to draft opening brief. Completed statement of the case and standard of review. Began to draft first argument re: hearing loss. Updated client file.	3.00
7/22/2019	MCLANCY	Continued to draft opening brief. Completed hearing loss arguments and began to draft tinnitus arguments. Updated client file.	2.70
7/24/2019	MCLANCY	Researched the law regarding disability requirements for hearing loss for VA compensation purposes. Drafted conclusion section for opening brief. Reviewed first draft of brief and made edits to include additional case law citations and additional argument points in tinnitus argument. Finalized first draft and submitted for review. Updated client file.	2.40
7/25/2019	JENNA	Reviewed case file notes, Board decision and RBA, reviewed draft brief and made edits and suggestions to clarify and strengthen.	1.60
7/26/2019	MCLANCY	Reviewed JZ's suggestions for additions and edits to drafted opening brief. Implemented JZ's suggestions to improve accuracy, clarity, and legal support for arguments. Finalized second draft of opening brief and submitted for proofreading review. Updated client file.	0.60
8/8/2019	MCLANCY	Reviewed and implemented proofreading edits as necessary to improve grammatical accuracy of opening brief. Finalized brief. Checked accuracy of all citations to the law and the record. E-filed opening brief. Calculated deadline for OGC's brief. Updated client file.	1.20
10/1/2019	MCLANCY	Exchanged emails with OGC regarding position on OGC's motion for an extension of time to file brief. Updated client file.	0.10
10/3/2019	MCLANCY	Received notice from Court attaching OGC's motion for extension of time to file brief. Reviewed for accuracy, saved to case file, and updated client file.	0.10
10/3/2019	MCLANCY	Received notice from Court granting OGC's motion for extension of time to file brief. Reviewed for accuracy, saved to case file, calculated new deadline for OGC's brief, and updated client file.	0.10
10/8/2019	SMCCAULE	Received notice that case was re-assigned. Reviewed case notes and docket. 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.	0.20
10/9/2019	APRIL	Prepared and efiled notice of appearance; updated client file	0.10
11/19/2019	SMCCAULE	Receive and review email from the Court with Appellee's brief. Quickly reviewed brief for overview of Appellee's arguments and any red flags or enhanced review issues. Calculated due date for reply brief. Updated client file and calendar.	0.10
11/25/2019	SMCCAULE	Reviewed case notes, opening brief, and Secretary's brief. Drafted memo to file outlining arguments to discuss in reply brief. Updated client file.	1.50
11/26/2019	APRIL	Reviewed opening and response briefs; drafted summary/outline of points for reply brief	0.50
11/26/2019	ZACH	Discussed litigation and reply briefing strategy	0.10
12/10/2019	APRIL	Discussed approach to IOM argument on reply	0.10
12/10/2019	SMCCAULE	Reviewed opening and response briefs. Discussed litigation strategy for reply brief.	1.50
12/10/2019	SMCCAULE	Phonecall with client. Drafted memo to file summarizing call. Updated client file and calendar.	0.20
1/12/2020	SMCCAULE	Outlined reply brief arguments. Updated client file.	0.80
1/13/2020	SMCCAULE	Completed draft of reply	1.20

## Exhibit A

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

Case No. 265100

Client: Arel, Mr. Edward S.

			<u>Hours</u>
1/13/2020	SMCCAULE	Continued drafting reply brief.	1.90
1/13/2020	SMCCAULE	Conducted legal research and continued drafting reply brief.	2.90
1/14/2020	APRIL	Reviewed opening brief and reviewed and annotated VA brief to prepare for review of reply brief draft	0.60
1/14/2020	APRIL	Conducted substantive review of first draft of reply brief; suggested revisions for accuracy, organization, completeness	3.00
1/14/2020	SMCCAULE	Made additional edits to draft of reply.	0.80
1/15/2020	SMCCAULE	Continued to review and incorporate AD's edits and suggestions into reply.	2.60
1/15/2020	SMCCAULE	Began to review and incorporate AD's edits and suggestions into reply. Conducted legal research.	3.00
1/16/2020	SMCCAULE	Reviewed and incorporated additional edits and suggestions into third draft reply.	1.80
1/17/2020	SMCCAULE	Made final revisions to reply brief. Checked citations to the record and authority. Finalized and prepared reply for e-filing. E-filed reply. Receive and review email from the Court confirming reply brief was filed. Updated client file.	1.70
1/29/2020	SMCCAULE	Receive and review email from the Court with Record of Proceedings. Ensured document was correct. Calculated due date for dispute of ROP, updated client file and calendar.	0.10
1/30/2020	SMCCAULE	Reviewed the Record of Proceedings and compared it to record citations in briefs. Determined that ROP was complete, prepared and e-filed letter to the Court accepting ROP. Receive and review email from the Court confirming response to ROP was filed. Updated client file.	0.90
2/3/2020	SMCCAULE	Receive and review notice from the Court that Judge Greenberg was assigned to case. Updated client file.	0.10
2/21/2020	SMCCAULE	Receive and review email from the Court with VA counsel's Notice of Appearance (Dixon). Updated client file.	0.10
3/10/2020	SMCCAULE	Called client to provide case update. Left voicemail requesting a call back. Drafted memo to file noting same.	0.10
3/10/2020	SMCCAULE	Phonecall with client re: status update. Drafted memo to file summarizing conversation. Updated client file and calendar.	0.10
4/29/2020	SMCCAULE	Receive and review email from the Court with memorandum decision. Ensured document was correct. Saved to client file. Updated file.	0.10
4/29/2020	SMCCAULE	Re-reviewed memorandum decision, notes in case file, opening brief, reply brief, and relevant parts of casemap and RBA in preparation for drafting summary of mem dec and case for client. Drafted summary of mem dec and case for client.	1.30
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
5/8/2020	SMCCAULE	Phonecall with client to discuss favorable decision. Drafted memo to file summarizing call. Updated client file and calendar.	0.20
5/21/2020	SMCCAULE	Receive and review email from the Court with entry of judgment. Ensured document was correct. Updated client file.	0.10
6/1/2020	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
7/14/2020	SOBRIEN	Phonecall with client re: mandate entering soon. Updated client file and calendar.	0.10
7/21/2020	SOBRIEN	Receive and review email from the Court with notice of mandate. Ensured document was correct. Updated client 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

## Exhibit A

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

Case No. 265100

Client: Arel, Mr. Edward S.

			<u>Hours</u>
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	4.3	\$ 207.73	\$ 893.24
DANIELLE	1.3	\$ 207.73	\$ 270.05
DCHAPMAN	0.7	\$ 173.00	\$ 121.10
EMMA	0.6	\$ 207.73	\$ 124.64
JENNA	1.6	\$ 207.73	\$ 332.37
MCLANCY	19.1	\$ 207.73	\$ 3,967.64
NICK	0.2	\$ 207.73	\$ 41.55
SMCCAULE	23.3	\$ 207.73	\$ 4,840.11
SOBRIEN	0.2	\$ 207.73	\$ 41.55
ZACH	1.5	\$ 207.73	\$ 311.60
	52.8		\$ 10,943.85

Expense: Filing Fee: \$50.00

Total: \$10,993.85

**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'").