

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

DIMAS M. VALENTIN	)	
Appellant,	)	
	)	
v.	)	CAVC No. 18-7310
	)	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 **\$14,850.06**.

The basis for the application is as follows:

**Grounds for an Award**

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

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

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

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

A. *The Appellant Is a Prevailing Party*

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

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

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

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

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

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

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

The Court set aside and remanded the Board's October 25, 2018 decision based upon the Board's failure to assess service treatment records Appellant supplied when he applied for benefits in April 1996. See pages 1-6 of the Memorandum Decision. The mandate was issued on July 22, 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. Valentin 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. Valentin is a person eligible to receive an award under the EAJA.

*C. The Position of the Secretary Was Not Substantially Justified*

In *White v. Nicholson*, 412 F.3d 1314 (Fed. Cir. 2004) the Federal Circuit applied the totality of the circumstances test and noted that "EAJA requires that the record must supply the evidence of the Government's substantial justification." 412 F.3d at 1316. The Secretary's position during proceedings before the Agency and in Court was not reasonable, either in law or in fact, and accordingly the

Secretary's position was not substantially justified at either the administrative or litigation stage in this case. There thus is nothing substantially justified in the Board's failure to assess service treatment records Appellant supplied when he applied for benefits in April 1996. 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: Stephen Capracotta, Danielle M. Gorini, Nicholas Phinney, April Donahower, Amy Odom, Brittani Howell, Barbara Cook, and Zachary Stolz.<sup>1</sup>

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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 Baldrige v. Nicholson*, 19 Vet.App. 227, 237-38 (2005) ("the fees sought must be 'based on the distinct contribution of each individual

Attorney Stephen Capracotta graduated from University of Connecticut Law School in 2016 and the *Laffey* Matrix establishes that \$365.00 is the prevailing market rate for an attorney with his experience.<sup>2</sup> 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.

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counsel.”). “The use in involved litigation of a team of attorneys who divide up the work is common today for both plaintiff and defense work.” *Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) *holding modified by Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). “Careful preparation often requires collaboration and rehearsal[.]” *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998). As demonstrated in Exhibit A, each attorney involved in the present case provided a distinct, and non-duplicative contribution to the success of the appeal. *See 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.”).

<sup>2</sup>The 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).

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. 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. Amy Odom graduated from University of Florida Law School in 2006 and the *Laffey* Matrix establishes that \$510.00 is the prevailing market rate for an attorney with her experience. Barbara Cook graduated from University of Michigan Law School in 1977 and the *Laffey* Matrix establishes that \$637.00 is the prevailing market rate for an attorney with her experience. 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.

Brittani Howell is a 2017 graduate of Syracuse University Law School, and at the time some of her work was performed, she was admitted to practice as a non-attorney practitioner. Ms. Howell has entered her 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 Ms. Howell’s court experience, Appellant seeks attorney’s fees at the rate of \$173.00 per hour for representation services before the Court for her time before she was admitted to practice law as an attorney on September 6, 2019. After that admittance date, Ms. Howell’s billing rate as an attorney is \$353.00.

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. Capracotta, Ms. Gorini, Mr. Phinney, Ms. Donahower, Ms. Howell after her admittance date, 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 six attorneys (14.20) results in a total attorney's fee amount of \$2,947.92.

Appellant seeks attorney’s fees at the rate of \$200.73 per hour for Ms. Cook’s representation services before the Court.<sup>4</sup> This rate per hour, multiplied by

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

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



the number of hours billed for Ms. Cook (2.90) results in a total attorney's fee amount of \$582.12.

Appellant seeks attorney's fees at the rate of \$203.60 per hour for Ms. Odom's representation services before the Court.<sup>5</sup> This rate per hour, multiplied by the number of hours billed for Ms. Odom (39.20) results in a total attorney's fee amount of \$7,981.12.

In addition, Appellant seeks attorney's fees at the rate of \$173.00 per hour for representation services before the Court for Ms. Howell's time as a non attorney practitioner prior to his July 3, 2019 admittance date. This rate per hour, multiplied by the number of hours billed (19.30) results in a total attorney's fee

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the formula proposed by the National Veterans Legal Services Program, Veterans Benefit Manual, [1683] (Barton Stichman et al. eds. 2017-18 ed.). Specifically, the hourly rate is determined using the \$193.83 hourly rate from the last month the Cincinnati Consumer Price Index-U was available in the second half of 2017, multiplying that number using the Midwest Consumer Price Index-U for the midpoint in the case, July 2019, divided by the data from the Midwest Consumer Price Index-U for December 2017 or 230.548.

<sup>5</sup> This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Washington-Arlington-Alexandria, DC-MD-VA-WV. *See Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to 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).

amount of \$3,338.90.

Based upon all of the foregoing, the total fee and expense amount sought is **\$14,850.06.**

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,  
Dimas M. Valentin  
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 7/28/2020

**Case No. 264962**

**Client: Valentin, Mr. Dimas M.**

			<b><u>Hours</u></b>
11/26/2018	STEPHEN	Reviewed Board decision and conducted legal research. Recommended case for appeal to CAVC and suggested legal arguments.	0.60
12/27/2018	NICK	Reviewed file & appeal documents. Filed Notice of Appeal, Notice of Appearance for Z. Stolz as lead counsel, DFH & Fee Agreement with the Court. Received, reviewed, & saved Court confirmation email to the file. Updated case file.	0.10
12/28/2018	NICK	Reviewed docket and confirmed Court's proper docketing of appeal documents; updated client file	0.10
1/10/2019	BHOWELL	Prepared and filed notice of appearance; updated file	0.10
1/16/2019	APRIL	Prepared and efiled notice of appearance; updated file.	0.10
1/23/2019	BHOWELL	Reviewed documents sent by client and called client re: same. Note to the file.	0.40
1/28/2019	BHOWELL	Received and reviewed BVA dec transmittal; updated file.	0.10
2/6/2019	NICK	Reviewed BVA decision & notes in file to prepare to view VBMS file	0.10
2/7/2019	NICK	Reviewed client's VBMS file; memo to the file.	0.20
2/12/2019	BHOWELL	Call to client, no answer, left message. Note to the file.	0.10
2/12/2019	BHOWELL	Client returned call re: status. Updated file.	0.10
2/19/2019	BHOWELL	Received and reviewed OGC Notice of appearance and updated client file	0.10
2/26/2019	BHOWELL	Received and reviewed RBA Cert of Serv; updated file	0.10
3/5/2019	BHOWELL	Drafted letter to client	0.10
3/5/2019	NICK	Reviewed RBA to determine need for dispute	1.00
3/19/2019	BHOWELL	Received and reviewed notice to file brief, calculated brief due date, and updated client file	0.10
3/26/2019	BHOWELL	Reviewed RBA -1395	2.70
3/27/2019	BHOWELL	Reviewed RBA 1396-2313	2.50
3/28/2019	BHOWELL	Reviewed RBA 2314-2830	1.30
3/29/2019	BHOWELL	Researched and drafted outline for PBC Memo	2.00
3/29/2019	BHOWELL	Reviewed RBA 2831-3758, began to establish procedural timeline for EED claim	3.00
4/3/2019	BHOWELL	Received and reviewed PBC Order, calculated memo due date, and updated client file	0.10
4/8/2019	APRIL	Reviewed BVA decision; researched case law concerning earlier effective dates; reviewed outline of arguments for PBC memo for legal and factual accuracy; suggested revisions and additions for accuracy and completeness	1.50
4/15/2019	BHOWELL	Continued drafting PBC Memo	0.80
4/15/2019	BHOWELL	Began drafting PBC Memo	3.00
4/16/2019	APRIL	Reviewed PBC memo draft; conducted research regarding pending/informal/same claims; suggested revisions and edits to draft for legal and factual accuracy; discussed arguments with Brittani	1.80
4/17/2019	APRIL	Reviewed revised draft of PBC memo and suggested revisions and edits for accuracy and clarity	1.10
4/17/2019	BHOWELL	Made additional revisions to the PBC Memo	1.30
4/17/2019	BHOWELL	Finalized PBC Memo, compiled and redacted RBA, emailed memo and rba to OGC and CLS, prepared and filed cert of service and drafted a letter to the client re: PBC and PBC memo	0.70
5/1/2019	BHOWELL	Call to client regarding PBC	0.10

# Exhibit A

Time from 10/1/2018 to 7/28/2020

Case No. 264962

Client: Valentin, Mr. Dimas M.

				<u>Hours</u>
5/1/2019	BHOWELL	Reviewed memo and case notes to prepare for conference, participated in conference and updated client file with notes post conference		0.60
5/7/2019	APRIL	Discussed litigation strategy for opening brief		0.10
5/7/2019	APRIL	Outlined arguments for opening brief for discussion of litigation strategy		0.20
5/7/2019	ZACH	Participated in meeting regarding briefing and litigation strategy.		0.10
6/20/2019	AODOM	Review and analyze Federal Circuit's decision in Shea.		0.50
7/1/2019	AODOM	Reviewed RBA and outlined procedural history, conducted legal research, and prepared memo to the file regarding litigation strategy.		1.70
7/2/2019	AODOM	Reviewed Federal Circuit docket in Sellers v. Wilkie to determine status.		0.20
7/2/2019	AODOM	Reviewed RBA to determine pre-2008 procedural history and outlined same.		2.00
7/3/2019	AODOM	Prepared and filed notice of appearance; updated file.		0.20
7/3/2019	AODOM	Reviewed statement of facts outline and pertinent portions of RBA and drafted email to VAGC regarding Shea and procedural history to determine whether joint resolution is possible.		0.50
7/3/2019	AODOM	Reviewed pertinent portions of RBA and drafted SOF - until 2011.		1.50
7/3/2019	AODOM	Reviewed pertinent portions of RBA and drafted statement of facts - until 2009.		3.00
7/5/2019	AODOM	Drafted statement of facts until 2018 BVA decision.		2.50
7/7/2019	AODOM	Reviewed and edited first draft to add persuasive value.		0.70
7/7/2019	AODOM	Reviewed statement of facts and prepared headings for clarity.		1.00
7/7/2019	AODOM	Conducted additional legal research and edited Argument I to add persuasive value.		1.10
7/7/2019	AODOM	Conducted legal research and finished drafting Argument II.		1.70
7/7/2019	AODOM	Began drafting Argument II for brief.		2.50
7/7/2019	AODOM	Conducted legal research and drafted Argument I.		3.00
7/8/2019	BARBARA	Review facts; suggest to simplify the procedure to strengthen the brief		1.00
7/9/2019	BARBARA	Review argument on adding left ankle to polyarthralgia; check for possible EED, check for possible IR, check rating decision to see what PA included, note to the file		0.40
7/14/2019	AODOM	Revise Argument II		1.00
7/14/2019	AODOM	Revise Argument I		2.40
7/15/2019	AODOM	Performed final proofread; filed brief; updated file.		1.10
7/15/2019	AODOM	Prepared final edits to brief		1.90
9/9/2019	AODOM	Received and reviewed Secretary's motion for extension of time to file brief; updated file.		0.10
9/9/2019	AODOM	Email exchange with VAGC attorney regarding position to Secretary's motion for extension to file brief; updated file.		0.10
9/10/2019	AODOM	Received and reviewed Clerk's order granting Secretary's motion for extension to file brief; updated file.		0.10
9/16/2019	BHOWELL	Reviewed email from client and sent response		0.10
10/28/2019	BHOWELL	Received and reviewed email with OGC's brief, reviewed brief, and added notes to client file		0.60
11/5/2019	BHOWELL	Returned client's call and gave him a status update		0.20
11/21/2019	AODOM	Conference re reply strategy.		0.40
11/21/2019	AODOM	Reviewed parties' briefs in preparation for reply strategy meeting.		0.50

# Exhibit A

Time from 10/1/2018 to 7/28/2020

Case No. 264962

Client: Valentin, Mr. Dimas M.

			<u>Hours</u>
12/3/2019	BHOWELL	Call to client regarding status	0.10
12/16/2019	AODOM	Conducted legal research regarding identification of the benefit sought.	1.50
12/16/2019	AODOM	Drafted reply argument regarding identification of the benefit sought.	2.00
12/17/2019	AODOM	Conducted legal research regarding intent to apply for benefit.	1.40
12/17/2019	AODOM	Drafted legal argument regarding intent to apply for benefit.	2.00
12/20/2019	BARBARA	Began review of and suggested edits to reply	0.60
12/20/2019	BARBARA	Continued to review reply, suggest additions	0.90
12/26/2019	AODOM	Revised reply brief	1.80
12/27/2019	AODOM	Prepared final edits to reply brief.	0.50
12/27/2019	ZACH	Reviewed notes on case and pleadings. Reviewed reply brief.	1.00
1/10/2020	BHOWELL	Received and reviewed ROP - emailed OGC regarding the pages they cited but did not include	0.60
1/10/2020	BHOWELL	Reviewed email from OGC, reviewed opening brief and reply to see if missing citations in Sec brief would negatively effect argument, received and reviewed email from OGC re: filing of ROP	0.40
1/10/2020	BHOWELL	Received and reviewed corrected ROP and filed response to ROP	0.30
1/14/2020	BHOWELL	Received and reviewed notice from Court with judge assignment and updated client file	0.10
4/28/2020	BHOWELL	Call to client with status update and updated client file	0.10
4/30/2020	AODOM	Reviewed and analyzed decision, compared against arguments raised in brief.	0.30
5/5/2020	BHOWELL	Call to client and discussed Mem Dec and next steps and updated client file	0.10
5/11/2020	BHOWELL	Returned client's call, discussed case and addressed his questions	0.40
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
5/22/2020	BHOWELL	Received and reviewed Judgment from Court and updated client file	0.10
6/1/2020	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
6/12/2020	BHOWELL	Received call from client, discussed mem dec and then discussed a recent RD	0.40
7/21/2020	BHOWELL	Call to client regarding mandate and updated client file	0.10
7/22/2020	BHOWELL	Received and reviewed mandate from Court and updated client file	0.10
7/28/2020	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
7/28/2020	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.00
7/28/2020	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>
<b>AODOM</b>	<b>39.2</b>	<b>\$ 203.60</b>	<b>\$ 7,981.12</b>

**Timekeeper Summary**

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
<b>APRIL</b>	<b>4.8</b>	<b>\$ 207.60</b>	<b>\$ 996.48</b>
<b>BARBARA</b>	<b>2.9</b>	<b>\$ 200.73</b>	<b>\$ 582.12</b>
<b>BHOWELL</b>	<b>3.7</b>	<b>\$ 207.60</b>	<b>\$ 768.12</b>
<b>DANIELLE</b>	<b>1.2</b>	<b>\$ 207.60</b>	<b>\$ 249.12</b>
<b>NICK</b>	<b>1.5</b>	<b>\$ 207.60</b>	<b>\$ 311.40</b>
<b>STEPHEN</b>	<b>0.6</b>	<b>\$ 207.60</b>	<b>\$ 124.56</b>
<b>ZACH</b>	<b>2.4</b>	<b>\$ 207.60</b>	<b>\$ 498.24</b>
BHOWELL	19.3	\$173.00	\$3,338.90
		Total:	\$14,850.06

## 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'").