

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
625 Indiana Avenue N.W., Suite 900
Washington, D.C. 20004

CONLEY F. MONK, JR.,

Appellant,

v.

ROBERT L. WILKIE, Secretary of Veterans
Affairs,

Appellee.

Case No. 19-217

June 26, 2020

**APPLICATION FOR AWARD OF ATTORNEY FEES AND EXPENSES UNDER 28
U.S.C § 2412(d)**

Pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) (2018) (“EAJA”), Appellant Conley F. Monk, Jr. applies for an award of reasonable attorney fees and expenses in the amount of \$13,806.43

ARGUMENT

The Equal Access to Justice Act, 28 U.S.C. § 2412, allows prevailing parties to collect attorneys’ fees and costs in civil or administrative actions against the United States. The prevailing party seeking the award must submit, “within thirty days of final judgment,” an application to the court that shows (1) “that the appellant is a prevailing party;” (2) that the appellant’s net worth is not more than \$2 million; (3) that the Secretary’s position “was not substantially justified;” and (4) “an itemized statement of the fees and expenses sought.” *Shealey v. O’Rourke*, 30 Vet. App. 108, 110 (2018), *aff’d sub nom. Shealey v. Wilkie*, 946 F.3d 1294 (Fed. Cir. 2020); *see also* 28 U.S.C. § 2412. This Court’s decision became final upon entry of judgment on June 5, 2020. J. at

1. Since the application falls within the 90-day window by which prevailing parties must submit their EAJA applications, this application is therefore timely. *See Casola v. West*, 1999 WL 399671, at *1 (Vet. App. May 25, 1999); *see also Stilwell v. Brown*, 6 Vet. App. 291, 300 (1994); U.S. Vet. App. R. 39. The application also demonstrates that Mr. Monk is entitled to reasonable attorney's fees and expenses under EAJA.

Before burdening the Court with this petition, Counsel for the appellant provided a draft petition and underlying time records to counsel for the Secretary, in an attempt to negotiate a settlement of his claim for fees and costs. Counsel for the Secretary declined to discuss any settlement until after the appellant had filed an EAJA petition with the Court. Accordingly, Mr. Monk has adjusted his calculation of reasonable fees to include the time spent preparing this petition.

I. Mr. Monk is a prevailing party for the purposes of EAJA

A “prevailing party” is one who receives either: (1) the ultimate benefit sought in bringing the litigation; or (2) a court-ordered remand which is predicated upon administrative error. *See Sumner v. Principi*, 15 Vet. App. 256, 264 (2001) (*en banc*), *aff’d sub nom. Vaungh v. Principi*, 336 F.3d 1351 (Fed. Cir. 2003). A remand is predicated upon administrative error when either the Court makes a finding of error or the Secretary concedes error. *Scarborough v. Nicholson*, 19 Vet. App. 253, 259 (2005).

In its May 13, 2020 order remanding Mr. Monk’s case to the BVA, this Court concluded that the Board “ignored its obligation” to adjudicate all issues reasonably raised by Mr. Monk as required by law. Mem. Decision at 1, 5. The Board failed “to address the relevant arguments Mr. Monk directed to VA and to make attendant factual findings,” thereby frustrating the Court’s ability to review the underlying decision and rendering the “reasons or bases” for the Board’s

decision “inadequate.” *Id.* at 6; *see also id.* at 10, 12 (where “an appellant has nevertheless demonstrated Board error warranting remand,” affirmance is not “appropriate”).

Mr. Monk received a court-ordered remand which was predicated upon this Court’s finding that the Board failed to comport with the governing law and render a decision consistent with the requirements of 38 C.F.R. § 3.103. *Id.* at 5. The remand is therefore based on an administrative error and Mr. Monk is a prevailing party for the purposes of EAJA.

II. Mr. Monk is eligible to receive an award

In order to file a petition for fees under EAJA, an individual’s net worth must not exceed \$2,000,000 at the time the litigation began. 28 U.S.C. § 2412(d)(2)(B). As an officer of the Court, the undersigned counsel hereby states that Conley F. Monk’s net worth did not exceed \$2,000,000 at the time this civil action was filed. Ex. A, Declaration of Michael J. Wishnie dated June 26, 2020 (“Wishnie Decl.”), at ¶ 9. Accordingly, Mr. Monk is eligible to receive an award of reasonable fees and expenses.

III. The Secretary’s position was not substantially justified

The Secretary of Veterans Affairs can defeat Appellant’s application for fees and costs only by demonstrating that the government’s position was substantially justified. *See Brewer v. American Battle Monument Commission*, 814 F.2d 1564, 1566-67 (Fed. Cir. 1987); *Stillwell v. Brown*, 6 Vet. App. 291, 301 (1994). “Substantially justified” means that the Government’s position has “a reasonable basis in both law and fact.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). Moreover, “[t]he Government has the burden to demonstrate that its position was substantially justified.” *Information Inter. Associates v. United States*, 75 Fed. Cl. 656, 658 (2007).

The position of the Secretary is not substantially justified if an administrative decision “fail[s] to provide an adequate statement of reasons or bases in its decisions.” *Cullens v. Gober*,

14 Vet. App. 234, 244 (2001); *see also ZP v. Brown*, 8 Vet. App. 303, 304 (1995) (finding that the government’s administrative position was not substantially justified where the BVA did not give an adequate statement of reasons or bases). This Court held that the Board failed to “address the relevant arguments” made by Mr. Monk and “make attendant factual findings,” thereby rendering its “reasons or bases inadequate.” Mem. Decision at 6. The Secretary’s position falls squarely in the realm of those which this Court has previously held are not justified. The Board’s failure to fully address the issues raised by Mr. Monk did not have a reasonable basis in law and this Court should therefore find that the Secretary’s position was not substantially justified.

IV. The Court should award appellant reasonable attorney’s fees and expenses of \$13,806.43

The EAJA provides that “a court shall award to a prevailing party . . . fees and other expenses” when the requirements of the statute are met. 28 U.S.C. § 2412(d)(1)(A). Fees and expenses under EAJA include “reasonable attorney fees.” *Id.* at (d)(2)(A). Where Congress has authorized the award of attorney’s fees, the “most useful starting point” is “the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Attorney fees for travel time are also compensable under EAJA, *Golden v. Gibson*, 27 Vet. App. 1, *6 (2014), and with “sufficient detail and specificity,” “other expenses” associated with litigation may include travel and hotel costs. *Id.* at *8

In March 1996 the EAJA was amended to raise the cap on attorney’s fees at \$125 per hour, “unless the court determines that an increase in the cost of living . . . justifies a higher fee.” Contract for America Advancement Act of 1996, Pub. L. No. 104-121, § 232(b)(1); 28 U.S.C. § 2412(d)(2)(A). This Court has previously recognized that an increase in the cost of living “since the enactment of the EAJA” may justify attorney’s fees higher than the statutory rate. *Elcyzyn v. Brown*, 7 Vet. App. 170, 179 (1994); *see also Levernier Constr., Inc. v. United States*, 947 F.2d

497, 503 (Fed. Cir. 1991) (“Clearly, the court may adjust the statutory cap governing the rate of attorney’s fees upward to account for an increase in the cost of living.”).

This Court has adopted the United States Department of Labor’s Consumer Price Index for All Urban Consumers (CPI-U or CPI-ALL) “for the region or local area where the services were performed” as “the appropriate cost of living index in determining whether a higher attorney fee under the EAJA is justified.” *Elcyzyn*, 7 Vet. App. at 181. The increase in cost of living based on the CPI-ALL index is calculated from the effective date of the EAJA to the date on which the attorney performed the legal services. *Id.*; *see also Phillips v. General Services Admin.*, 924 F.2d 1577, 1583 (Fed. Cir. 1991). In order to simplify the calculations, this Court has previously held that the party seeking fees under EAJA should select “a single mid-point date, such as the date upon which an appellant’s principal brief, motion, or petition is filed with the Court, as the base for calculating a cost of living increase.” *Elcyzyn*, 7 Vet. App. at 181. For calculating the CPI increase in this case, the Appellant selects June 26, 2019, the date upon which his principal brief was filed, as the mid-point for calculating a cost of living increase.

From March 1996 to June 2019, the CPI-U for the Northeast Region rose from 162.9 to 270.133, an increase of 107.333. *See* Bureau of Labor Statistics US-CPI-ALL Urban Northeast, Ex. C. Applying the increase in the CPI to the EAJA statutory rate, Appellant seeks attorney’s fees at the rate of \$232 per hour for Attorney Wishnie’s time. Wishnie Decl., Ex. A. Further, Appellant seeks fees for law student representation according to the U.S. Attorney’s Office “Fees Matrix” in Washington, D.C., *see* USAO Attorney Fees Matrix, Ex. D at the rate \$173 of per hour. Wishnie Decl., Ex. A.

An itemized statement of the services rendered and the reasonable fees and expenses for which Appellant seeks compensation is attached to this application. Ex. A. Also attached to this

application is a declaration that lead counsel has: (1) reviewed the combined billing statement and is satisfied that it accurately reflects the work performed by all counsel; and (2) considered and eliminated all time that is excessive or redundant. *Baldridge and Demel v. Nicholson*, 19 Vet. App. 227, 240 (2005). The fees sought contain calculations based on both contemporaneous and non-contemporaneous records.¹ To account for potential redundancies, Appellant reduced contemporaneous hours by 20% of their original total, and non-contemporaneous hours by 50% of their original total. After applying these discounts, Appellant seeks attorney fees and expenses at the following rates for representation in the Court of Appeals for Veterans Claims:

<u>Name</u>	<u>Base Rate</u>	<u>Hours</u>	<u>Fee Amount (Discounted)</u>	<u>Expense Amount</u>
Matthew Handley (Law Student Intern)	\$173	15.45	\$1,972.20	\$0
Blake Schultz (Law Student Intern)	\$173	3.25	\$423.85	\$0
Madison Needham (Law Student Intern)	\$173	18.333	\$1585.80	\$0
Kayla Morin (2020 Law Graduate)	\$173	11.85	\$1,470.39	\$0
Jordan Goldberg (2019 Law Graduate)	\$173	49.85	\$6857.72	\$0
Michael Wishnie (Attorney)	\$232	7.135	\$1,437.47	\$50.00
			TOTAL FEES	\$13,756.43
			TOTAL EXPENSES	\$50.00
			TOTAL FEES & EXPENSES	\$13,806.43

¹ For the purposes of this request, hours that were recorded in Clio, clinic's time-keeping software, within 7 days have been considered "contemporaneous."

CONCLUSION

Wherefore, Appellant respectfully requests that the Court award attorney fees in total amount of \$13,806.43 in this matter.

/s/ Michael J. Wishnie

Matthew Handley, Law Student Intern

Ryan Liu, Law Student Intern

Kayla Morin, Law Student Intern

Blake Shultz, Law Student Intern

Michael Wishnie, Supervising Attorney

Veterans Legal Services Clinic

Jerome N. Frank Legal Svcs. Org.

Yale Law School*

P.O. Box 209090

New Haven, CT 06520-9090

* This brief does not purport to state the view of Yale Law School, if any.

EXHIBIT A

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
625 Indiana Avenue N.W., Suite 900
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CONLEY F. MONK, JR.,

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ROBERT L. WILKIE, Secretary of Veterans
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Case No. 19-217

June 26, 2020

EXHIBIT A: DECLARATION OF MICHAEL J. WISHNIE

In support of Appellant's application for attorney's fees under 28 U.S.C. § 2412(d), I
Michael J. Wishnie hereby declare as follows:

1. I am an attorney licensed to practice in Connecticut, New York, and Massachusetts, and before numerous U.S. District Courts, U.S. Courts of Appeals, and the Supreme Court. I am admitted to practice before the U.S. Court of Appeals for Veterans Claims.
2. Matthew Handley has completed his second year as a law student at Seton Hall University School of Law and is expected to receive his J.D. in May 2022. He was employed as a summer fellow in the Veterans Legal Services Clinic at Yale Law School ("the Clinic") for the summer of 2019 and 2020.
3. Blake Schultz has completed his second year as a law student at Yale Law School and is expected to receive his J.D. in May 2021. He enrolled in the Clinic in January 2019 and has remained enrolled up to the present.

4. Madison Needham has completed her second year as a law student at Yale Law School and is expected to receive her J.D. in May 2021. She enrolled in the Clinic in January 2019 and has remained enrolled up to the present.
5. Kayla Morin was a law student at Yale Law School who received her J.D. in May 2020. She was enrolled in the Clinic from August 2019 through June 2020.
6. Jordan Goldberg was a law student at Yale Law School who received his J.D. in May 2019. He was enrolled in the Clinic in from January 2017 to May 2019.
7. Mr. Handley, Mr. Schultz, Ms. Needham, Ms. Morin, Mr. Goldberg, and I have represented Conley F. Monk, Jr. in the matter of *Monk v. Wilkie*, Vet. App. No. 19-217, without charge.
8. We visited the website maintained by the United States Department of Labor, Bureau of Labor Statistics, Office of Consumer Pricing Indexing to ascertain the Consumer Price Index increases between March 1996, when the EAJA was amended, and June 2019.
9. Certificate of Net Worth: at no time during the course of his appeal to the Court of Appeals for Veterans Claims, did Appellant Conley F. Monk, Jr. have a net worth of, or in excess of, \$2,000,000.00.
10. I have reviewed the combined statement of services rendered by the supervising attorney and law student interns in the representation of the Appellant. I have eliminated time that is excessive or redundant, and I am satisfied that the statement accurately reflects work performed by all counsel.
11. Attached hereto as Exhibit A is a true and correct copy of the time and expense records relevant to this petition.

12. Attached hereto as Exhibit B is a true and correct copy of records reflecting the expenses in this case.
13. Attached hereto as Exhibit C is a true and correct copy of the Consumer Price Index published by the Bureau of Labor Statistics.
14. Attached hereto as Exhibit D is a true and correct copy of the U.S. Attorney's Office "Fees Matrix" in Washington D.C.
15. Attached hereto as Exhibit E is a true and correct copy of the check for the filing fee in this case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 26, 2020

/s/ Michael J. Wishnie
Michael J. Wishnie, Supervising Attorney
Veterans Legal Services Clinic
Jerome N. Frank Legal Services
Organization
P.O. Box 209090
New Haven, CT 06511
(203) 436-4780 (telephone)
(203) 432-1426 (fax)

EXHIBIT B

Time Sheet: Matthew Handley – Law Student Intern

<u>Date</u>	<u>Task(s)</u>	<u>Hours</u>	<u>Contemporaneous</u>
5/24/2019	Prepare for and conduct telephonic mediation conference	1.5	X
6/17/2019	Edits on Appellant's Brief	1.5	X
5/22/2020	Drafted memorandum	3	
06/15/2020	Preparation of EAJA fees petition	3.5	X
06/16/2020	Editing EAJA petition and researching/preparing exhibits	2	
06/17/2020	Implementing supervisor's edits on first draft of EAJA petition	1.2	
06/24/2020	Preparing EAJA petition and exhibits for opposing counsel	0.33	X
06/24/2020	Implementing edits to EAJA petition and preparing settlement letter	1.42	X
06/25/2020	Revising EAJA petition post settlement letter	1	X

	Hours	Discount	Rate	
Total Hours	15.45		\$173	
Contemporaneous Hours	12.25	20%	\$138.40	\$1,695.40
Non-Contemp. Hours	3.2	50%	\$86.50	\$276.80
Total Fees				\$1,972.20

Time Sheet: Blake Schultz – Law Student Intern

<u>Date</u>	<u>Task(s)</u>	<u>Hours</u>	<u>Contemporaneous</u>
2/11/2019	Supervision Meeting	0.5	X
3/18/2019	Team Meeting to discuss CAVC briefing	1	X
4/1/2019	Preparation of Appellant's Brief	0.5	
9/9/2019	Supervision Meeting	0.5	X
9/26/2019	Meeting with Client	0.75	X

	<u>Hours</u>	<u>Discount</u>	<u>Rate</u>	
Total Hours	3.25		\$173	
Contemporaneous Hours	2.75	20%	\$138.40	\$380.60
Non-Contemp. Hours	0.5	50%	\$86.50	\$43.25
Total Fees				\$423.85

Time Sheet: Madison Needham – Law Student Intern

<u>Date</u>	<u>Task(s)</u>	<u>Hours</u>	<u>Contemporaneous</u>
1/23/2019	Initial meeting of team	2	
1/25/2019	Phone call with client	1	
1/28/2019	Team meeting	0.5	
1/31/2019	Team meeting	1.25	
2/25/2019	Team meeting	0.5	
2/27/2019	Client meeting	1.25	
3/4/2019	Team meeting	0.5	
3/6/2019	Research for Appellant's Brief	3	
3/7/2019	Research for Appellant's Brief	1	
3/18/2019	Team meeting	0.833333333	
3/20/2019	Research and writing on memorandum	3.75	
3/22/2019	Brief drafting	1.25	
3/25/2019	Team meeting	0.5	
4/1/2019	Team meeting	0.5	
4/15/2019	Team meeting	0.5	

	<u>Hours</u>	<u>Discount</u>	<u>Rate</u>	
Total Hours	18.333		\$173	
Contemporaneous Hours	0	20%	\$138.40	\$0
Non-Contemp. Hours	18.333	50%	\$86.50	\$1,585.80
Total Fees				\$1,585.80

Time Sheet: Kayla Morin – 2020 Law Graduate

<u>Date</u>	<u>Task(s)</u>	<u>Hours</u>	<u>Contemporaneous</u>	
9/18/2019	Drafting reply brief	4.5	X	
5/20/2020	Supervision meeting	0.5		
5/31/2020	Preparation of memorandum regarding EAJA requirements	3.5	X	
06/2/2020	EAJA Calculations	2		
06/3/2020	Supervision meeting	0.6	X	
06/17/2020	Writing settlement letter	0.75		
		<u>Hours</u>	<u>Discount</u>	<u>Rate</u>
Total Hours		11.85		\$173
Contemporaneous Hours		8.6	20%	\$138.40
Non-Contemp. Hours		3.25	50%	\$86.50
Total Fees				\$1,470.39

Time Sheet: Jordan Goldberg – 2019 Law Graduate

<u>Date</u>	<u>Task(s)</u>	<u>Hours</u>	<u>Contemporaneous</u>
1/30/2019	Correspondence re: research memo on BVA consideration of upgrade cases.	0.5	X
1/31/2019	Research and compile timeline for CAVC appeal.	0.8	
2/3/2019	Research and compile case timeline.	1.25	X
2/11/2019	Supervision meeting	0.5	X
2/11/2019	Team meeting	0.5	X
2/12/2019	Communication with client	0.25	X
2/14/2019	Review memo	1.25	X

2/22/2019	Research and draft memorandum	2.5	X
2/24/2019	Review reports and rulemaking petitions	3	X
2/25/2019	Supervision	0.5	X
2/27/2019	Meeting with client	0.75	X
3/18/2019	Meet with team to discuss case work and strategy.	0.5	X
3/19/2019	Review RBA; internal correspondence	0.75	X
3/21/2019	Research and draft CAVC brief	4.5	X
3/22/2019	Research and draft CAVC brief	7	X
4/19/2019	Draft summary of the issues for CLS conference	4.5	X
4/20/2019	Draft and send email to opposing counsel	0.3	X
4/21/2019	Discuss timing and plan for CLS conference	0.5	X
4/24/2019	Review and revise brief sections	3.7	X
4/26/2019	Review and revise brief sections	2.9	X
5/7/2019	Review and edit summary of issues	1.5	X
5/10/2019	Finalize and submit summary of issues	0.75	X
5/14/2019	Meeting to discuss mediation conference and case strategy	0.5	X
5/17/2019	Finalize and submit student appearances	0.75	X
5/22/2019	Meeting to discuss and moot for upcoming mediation conference	1	X
5/24/2019	Preparation for Rule 33 Conference	1.75	X
5/24/2019	Attend and debrief Rule 33 Conference	1.15	X

5/25/2019	Revise summary of Rule 33 Conference	0.75	X
6/5/2019	Email re: schedule for completing CAVC brief	0.25	X
6/11/2019	Revise CAVC brief draft	2.25	X
6/12/2019	Revise and draft portions of appellant's brief	1	X
6/12/2019	Revise and finalize appellant's brief for review by supervisor	1.75	X

	Hours	Discount	Rate	
Total Hours	49.85		\$173	
Contemporaneous Hours	49.05	20%	\$138.40	\$6,788.52
Non-Contemp. Hours	0.8	50%	\$86.50	\$69.20
Total Fees				\$6857.72

Time Sheet: Michael Wishnie – Attorney

Date	Task(s)	Hours	Contemporaneous
3/24/2019	review memo, case law, & research for CAVC brief	0.395833333	X
5/3/2019	review & edit summary of issues	0.790833333	X
5/8/2019	review & edit next draft summary of issues	0.046388889	X
5/21/2019	moot Blake for CAVC mediation; analyze appeal issues; discuss settlement options	1	X
5/24/2019	moot Blake S. and strategize for call (0.75); conduct telephonic mediation w CAVC & short debrief w students (0.75)	1.5	X
6/14/2019	review & edit draft brief	0.046388889	X
6/15/2019	review & edit brief	1.386388889	X
6/20/2019	review & edit next draft CAVC brief	0.987777778	X
9/8/2019	review & edit CAVC reply brief	0.592222222	X
9/12/2019	final review CAVC reply brief	0.321666667	X
1/15/2020	review & edit response to VA supp authority	0.0675	X

6/24/2020	final review, EAJA petition for VA	0.22	X
6/25/2020	review CAVC fee petition for filing	0.39	X

	Hours	Discount	Rate	
Total Hours	7.745		\$232	
Contemporaneous Hours	7.745	20%	\$185.6	\$1,437.47
Non-Contemp. Hours	0	50%	\$116	\$0
Total Fees				\$1,437.47

EXHIBIT C



Databases, Tables & Calculators by Subject

Change Output Options:

From: 1996 ▾ To: 2020 ▾

 include graphs include annual averages[More Formatting Options](#) ➔

Data extracted on: June 15, 2020 (9:59:19 AM)

CPI for All Urban Consumers (CPI-U)

Series Id: CUUR0100SA0, CUUS0100SA0

Not Seasonally Adjusted

Series Title: All items in Northeast urban, all urban consumers, not seasonally adjusted

Area: Northeast

Item: All items

Base Period: 1982-84=100

Download: [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1996	161.4	162.2	162.8	162.9	163.0	163.1	163.4	164.0	164.6	165.1	165.4	165.7	163.6	162.6	164.7
1997	166.2	166.9	167.3	167.1	166.8	167.0	167.6	167.8	168.4	168.7	168.5	168.4	167.6	166.9	168.2
1998	168.8	169.1	169.3	169.5	169.4	169.6	169.9	170.5	170.6	171.3	171.2	171.2	170.0	169.3	170.8
1999	171.4	171.6	171.9	172.8	172.8	173.1	173.4	174.1	174.8	175.5	175.5	175.5	173.5	172.3	174.8
2000	176.2	177.6	178.5	178.5	178.4	179.0	179.8	179.9	180.7	181.2	181.5	181.3	179.4	178.0	180.7
2001	182.2	182.8	183.7	184.2	184.6	185.3	185.0	185.1	185.1	185.0	185.0	185.0	184.2	184.4	184.9
2002	184.9	186.1	187.0	187.8	187.7	187.8	188.3	189.3	189.5	189.9	190.1	189.6	188.2	186.9	189.5
2003	190.5	191.7	193.0	192.6	192.7	192.8	193.5	194.3	195.0	195.4	195.1	194.9	193.5	192.2	194.7
2004	195.9	196.8	198.6	199.4	199.9	201.1	201.0	201.0	201.2	202.5	202.6	201.9	200.2	198.6	201.7
2005	202.6	203.6	206.0	206.9	206.2	206.2	207.9	208.7	210.8	211.5	210.0	209.0	207.5	205.3	209.7
2006	211.0	211.6	212.8	214.7	215.7	216.7	217.5	218.1	216.3	215.2	214.8	215.2	215.0	213.8	216.2
2007	215.813	216.651	218.334	219.501	220.591	221.579	221.945	221.559	221.436	221.951	223.356	223.425	220.512	218.745	222.279
2008	224.325	225.213	226.926	228.133	230.089	232.649	234.545	233.788	232.841	230.837	227.236	225.091	229.306	227.889	230.723
2009	225.436	226.754	227.309	227.840	228.136	229.930	230.154	230.883	231.200	231.304	231.708	231.462	229.343	227.568	231.119
2010	232.294	232.382	233.188	233.615	234.130	233.834	233.885	234.150	234.027	234.671	235.094	235.141	233.868	233.241	234.495
2011	235.969	237.110	239.074	240.267	241.566	241.690	242.282	243.033	243.323	243.014	242.652	241.987	240.997	239.279	242.715
2012	242.879	243.850	245.125	245.850	245.709	245.201	244.984	246.252	247.409	247.564	247.097	246.456	245.698	244.769	246.627
2013	247.277	248.665	248.719	248.464	248.584	248.851	249.411	249.858	250.231	249.320	249.503	249.567	249.038	248.427	249.648
2014	251.045	251.233	252.413	252.506	253.598	253.555	253.833	253.185	253.154	252.730	251.781	250.519	252.463	252.392	252.534
2015	250.016	250.619	251.451	251.760	252.770	253.626	253.405	252.903	252.922	252.504	252.573	251.670	252.185	251.707	252.663
2016	251.739	252.250	252.854	254.270	255.023	255.471	255.386	255.545	256.085	256.605	256.541	256.427	254.850	253.601	256.098
2017	258.073	258.768	258.510	259.165	259.386	259.335	258.833	259.508	260.875	260.580	260.630	260.791	259.538	258.873	260.203
2018	262.188	263.260	263.556	264.669	265.840	265.950	265.830	266.425	266.709	266.464	265.487	265.286	265.139	264.244	266.034
2019	266.109	266.706	268.025	269.070	269.744	270.133	270.381	270.548	270.563	270.348	270.643	270.429	269.392	268.298	270.485
2020	272.316	273.080	272.531	271.325	271.345										

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EXHIBIT D

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'").

EXHIBIT E

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