

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

REGINALD L. SMITH,

Appellant,

v.

ROBERT L. WILKIE,

Secretary of Veterans Affairs,

Appellee.

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Vet. App. No. 18-1189

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FOR AWARD OF REASONABLE ATTORNEYS’ FEES AND
EXPENSES PURSUANT TO 28 U.S.C. § 2412(d)**

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**APPELLANT'S APPLICATION FOR AWARD OF REASONABLE
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 U.S. Vet. App. Rule 39, Appellant, Reginald L. Smith applies for an award of reasonable attorneys' fees and expenses in the amount of \$ 29,628.35.

PROCEDURAL HISTORY

On November 14, 2017, the Board of Veterans' Appeals (Board) issued a decision that denied Appellant's claim for entitlement to service connection for a left shoulder disability. Appellant filed a timely notice of appeal with this Court on March 8, 2018.

On May 3, 2018, the Secretary served on Appellant's counsel the 3,298-page Record Before the Agency (RBA). On July 6, 2018, the Court issued an Order to file Appellant's brief within sixty days. On July 19, 2018, the Court issued an Order scheduling an August 16, 2018 Rule 33 Staff Conference. The Rule 33 Conference was subsequently rescheduled for September 14, 2018.

Pursuant to the Court's Order, Appellant's counsel prepared a 6-page Rule 33 Summary of the Issues addressing the legal errors committed by the Board in the decision on appeal, which was served on counsel for the Secretary and Central Legal Staff (CLS) counsel on August 31, 2018. On September 14, 2018, the Rule 33 Staff Conference was held as scheduled, but the parties failed to arrive at a joint resolution.

On November 21, 2018, Appellant filed his 17-page initial brief (hereinafter, App. Br.) with the Court. In his brief, Appellant argued that the Board prejudicially violated his right to fair process and Fifth Amendment right to due process because, after receiving Appellant's hearing testimony, and after then issuing November 2015 and September 2016 remand orders with statements that caused Appellant to believe that the Board had found his testimony credible, the Board in November 2017 found the same testimony to be not credible without first affording Appellant notice that the testimony's credibility was again at issue or providing Appellant a meaningful opportunity to respond. *See Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009); *Cogburn v. Shinseki*, 24 Vet. App. 205 (2010); App. Br. at 14–17.. Appellant also argued that the Board prejudicially erred by providing inadequate reasons or bases for its conclusion that Appellant's testimony lacked credibility. *See* 38 U.S.C. § 7104(d)(1); *Allday v. Brown*, 7 Vet. App. 517 (1995); App. Br. at 8–12; *see also* App. Br. at 12–17. Appellant pointed out that, in its November 2017 decision, the Board never addressed the statements in its prior November 2015 and September 2016 remands that he understood specifically to

concede that Appellant's testimony was competent and credible. App. Br. at 11. Appellant also argued that the VA medical examiner responsible for evaluating his left shoulder in December 2015 and November 2016, on remand from the Board, failed to properly address, in accordance with the Board's remand instructions, his "credible lay statements." See App. Br. at 12–14. Relatedly, Appellant argued that in relying on these VA examinations, the Board prejudicially erred by failing to ensure compliance with its prior remand orders. *Stegall v. West*, 11 Vet. App. 268 (1998); App. Br. at 13–14.

On March 1, 2019, the Secretary filed his responsive brief (hereinafter, Sec. Br.) urging the Court to affirm the Board's decision on appeal. In his brief, the Secretary argued that (1) Board remands are interlocutory, therefore the Board did not in fact reverse a prior credibility determination; (2) the evidence of record fails to substantiate Appellant's nexus to service, therefore any error by the Board is harmless; (3) in tandem, the December 2015 and November 2016 VA examinations were adequate; and (4) the VA did not violate Appellant's right to fair process or Fifth Amendment right to due process. See Sec. Br. at 8–23.

On April 29, 2019, Appellant filed his 15-page Reply Brief (hereinafter, App. Rep. Br.) with the Court. Responding to the Secretary's argument, Appellant explained that the Board prejudicially erred in relying on inadequate VA examination reports. See App. Rep. Br. at 8–10. Appellant also further explained that the Board violated his fair process and due process rights when it reversed the prior remand orders' favorable credibility statements without notice or an opportunity to respond.

See App. Rep. Br. at 10–15. In response to the Secretary’s argument that Appellant should have been aware of the continual development of his claim, Appellant argued that given the remand orders instructing the VA examiner to please accept as true his “credible lay statements,” he was not on notice that the issue remained unsettled. See *Thurber v. Brown*, 5 Vet. App. 119 (1993); App. Rep. Br. at 4, 9, 11–12.

On May 13, 2019, the Secretary filed the Record of Proceedings with the Court. On October 24, 2019, the case was argued before a panel of the Court, and on April 27, 2020, the Court issued its Opinion. In the decision, the Court held that the Board erred when, in violation of Appellant’s fair process rights, it failed to provide Appellant with notice and an opportunity to respond to its apparent change in position regarding credibility. See *generally Thurber*, 5 Vet. App. at 119; Opinion 5–9. The Court concluded that the language used in the previous Board remand orders could reasonably have led Appellant to believe that the credibility question was favorably settled, and that remand is required to remedy prejudicial error. Opinion at 8. The Court also found that December 2015 and November 2016 VA medical opinions were inadequate and the Board erred by relying on them. See Opinion at 9–10. The Court concluded that, on remand, the duty to assist may require a new medical examination that addresses Appellant’s lay statements and determines whether Appellant’s current shoulder condition is consistent with his in-service injury. See 38 U.S.C. § 5103A(d)(1); Opinion at 10.

The Court entered Judgment on May 19, 2020. Mandate issued effective

July 20, 2020.

ARGUMENT

I. APPELLANT IS A PREVAILING PARTY AND ELIGIBLE TO RECEIVE AN AWARD.

Under 28 U.S.C. § 2412(d), a court shall award to a prevailing party fees and other expenses incurred by that party in any civil action, including proceedings for judicial review of agency action. To obtain “prevailing party” status, a party need only to have obtained success “on any significant issue in litigation which achieve[d] some of the benefit ... sought in bringing the suit.” *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993) (quoting *Texas State Teachers Assn. v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791-92 (1989)).

In this case, Appellant is a prevailing party entitled to an award of fees and costs because the Court vacated the Board’s November 14, 2017 decision based on administrative error and remanded the matter for readjudication consistent with its decision. See *Zuberi v. Nicholson*, 19 Vet. App. 541 (2006); *Sumner v. Principi*, 15 Vet. App. 256 (2001) (en banc). The Court-ordered relief creates the “material alteration of the legal relationship of the parties’ necessary to permit an award of attorney’s fees.” *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep’t of Health and Human Res.*, 532 U.S. 598, 604 (2001) (quoting *Garland Indep. Sch. Dist.*, 489 U.S. at 792).

Appellant is a party eligible to receive an award of reasonable fees and expenses because his net worth did not exceed \$2 million (two million dollars) at the

time this civil action was filed. As an officer of the Court, the undersigned counsel hereby states that Appellant's net worth did not exceed \$2 million (two million dollars) at the time this civil action was filed, nor did he own any unincorporated business, partnership, corporation, association, unit of local government, or organization, of which the net worth exceeded \$7 million (seven million dollars) and which had more than 500 employees. See *Bazalo v. Brown*, 9 Vet. App. 304, 309, 311 (1996). In addition, Appellant submitted a Declaration of Financial Hardship, which was accepted for filing by the Court on May 17, 2018. See *Owens v. Brown*, 10 Vet. App. 65, 67 (1997).

II. THE POSITION OF THE SECRETARY OF VETERANS AFFAIRS WAS NOT SUBSTANTIALLY JUSTIFIED.

The Secretary 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 Comm'n*, 814 F.2d 1564, 1566-67 (Fed. Cir. 1987); *Stillwell v. Brown*, 6 Vet. App. 291, 301 (1994). The U.S. Supreme Court has held that for the position of the government to be substantially justified, it must have a "reasonable basis both in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988); accord *Beta Sys. v. United States*, 866 F.2d 1404, 1406 (Fed. Cir. 1989).

In this case, the Secretary's administrative and litigation position were not substantially justified. As described in the "Procedural History," *supra*, the Court set aside and remanded the Board's November 14, 2017 decision because the Board committed prejudicial error when it failed to provide Appellant with notice and the

opportunity to respond to its change in position regarding credibility, and when it relied on VA medical opinions that were inadequate for rating purposes. See Opinion at 5–10. These errors and others committed by the Board, had no reasonable basis in fact or in law.

In addition, the litigation position of the Secretary, defending the Board's decision despite the aforementioned errors, had no basis in fact or law.

III. ITEMIZED STATEMENT OF SERVICES RENDERED AND AMOUNTS OF REASONABLE FEES AND EXPENSES

An itemized statement of the services rendered and the reasonable fees and expenses for which Appellant seeks compensation is attached to this application as Exhibit A. Included in Exhibit A is a certification 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.” *Baldrige and Demel v. Nicholson*, 19 Vet. App. 227, 240 (2005). In the exercise of billing judgment, Appellant has eliminated **189** hours of attorney time and **14** hours of paralegal and law clerk time from this itemized statement and this fee petition.

Appellant seeks attorneys' fees at the following rates for representation in the Court of Appeals for Veterans Claims:¹

¹ A rate in excess of \$125 per hour for the attorneys for Appellant in this case is justified based on the increase in the cost of living since the EAJA was amended in March 1996. See 28 U.S.C. § 2412(d)(2)(A)(ii). The \$125 attorney fee rate, adjusted for inflation for the Washington Metropolitan Area, was \$206.32 for 2018 and \$208.94 for 2019 hours, the years over which litigation took place in this case.

<u>Name</u>	<u>Rate</u>	<u>Hours</u>	<u>Fee Amount</u>
Barton F. Stichman (1974 law graduate)	\$ 208.94	2.7	\$ 564.14
Kimberly Parke (2007 law graduate)	\$ 208.94	7.0	\$ 1,462.58
Stacy A. Tromble (2007 law graduate)	\$ 206.32 \$ 208.94	2.5 6.3	\$ 515.80 \$ 1,316.32
John Niles (2008 law graduate)	\$ 208.94	75.5	\$ 15,774.97
Michael Spinnicchia (2012 law graduate)	\$ 206.32	0.4	\$ 82.53
Amie Leonard (2015 law graduate)	\$ 206.32 \$ 208.94	25.8 15.8	\$ 5,323.06 \$ 3,301.25
Angela Nedd (paralegal)	\$ 164.00 \$ 173.00	0.2 0.2	\$ 32.80 \$ 34.60
Janee LeFrere	\$ 166.00	1.0	\$ 166.00

See Bureau of Labor Statistics Data, CPI-U (Exhibit B). This rate was calculated by using the CPI-U for the Washington-Arlington-Alexandria, DC-VA-MD-WV area adjusted for inflation between March 1996 and the annual data for 2018 and 2019. See Exhibit B; *Mannino v. West*, 12 Vet. App. 242 (1999). The market rates for Appellant's attorneys exceeded the requested rates per hour during the relevant time period. See *Covington v. District of Columbia*, 839 F. Supp. 894, 904–05 (D.D.C. 1993), *aff'd*, 58 F.3d 1101 (D.C. Cir. 1995). The prevailing market rate for the work done by paralegals and law clerks was at least \$164.00 from June 1, 2017, to May 31, 2018, at least \$166.00 from June 1, 2018 to May 31, 2019, and at least \$173.00 from June 1, 2019, to the present. See USAO Attorney's Fees Matrix, 2015-2020 (Exhibit C) ("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 . . . area."); see also *Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996); *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008).

(paralegal)	\$ 173.00	0.8	\$ 138.40
Kulia Petzoldt (law clerk)	\$ 166.00	0.4	\$ 66.40
Jack McCaffrey (law clerk)	\$ 173.00	3.9	\$ 674.70
Kevin Adams (law clerk)	\$ 173.00	0.6	\$ 103.80

SUBTOTAL: \$ 29,557.35

The reasonable expenses for which Appellant seeks compensation are:

<u>Nature of Expense</u>	<u>Expense Amount</u>
Federal Express and USPS Charges	\$ 21.00
Duplication Charges	\$ 50.00

SUBTOTAL: \$ 71.00

TOTAL: \$ 29,628.35

WHEREFORE, Appellant respectfully requests that the Court award attorneys' fees and expenses in the total amount of **\$ 29,628.35.**

Respectfully submitted,

FOR APPELLANT:

Date: August 11, 2020

/s/ John Niles
 John Niles
 Barton F. Stichman
 National Veterans Legal
 Services Program
 1600 K Street, NW, Suite 500
 Washington, DC 20006-2833
 (202) 621-5780

Counsel for Appellant

EXHIBIT A

**NVLSP Staff Hours for Reginald L. Smith
Vet. App. No. 18-1189**

Date: 2/14/2018 0.4 Staff: Michael C. Spinnicchia
Review Board of Veterans' Appeals (BVA) decision and identify issues to raise on appeal. Draft memorandum regarding issues to raise on appeal.

Date: 2/20/2018 0.2 Staff: Amie Leonard
Draft correspondence to client regarding BVA decision and issues to be raised on appeal.

Date: 3/6/2018 0.4 Staff: Amie Leonard
Teleconference with client regarding BVA decision and issues to raise on appeal and questions regarding same (0.4) **[Additional 0.1 eliminated in the exercise of billing judgment]**.

Date: 3/7/2018 0.2 Staff: Amie Leonard
Finalize correspondence to client regarding case initiation, with documents for client to execute and return.

Date: 3/8/2018 0.2 Staff: Angela Nedd
Draft Notice of Appeal (0.1); draft email to Clerk of the Court regarding case initiation, with attachments (0.1).

Date: 3/8/2018 0.1 Staff: Amie Leonard
Finalize Notice of Appeal and Notices of Appearance.

Date: 3/9/2018 0.0 Staff: Amie Leonard
Review docket regarding Notice of Appeal, Court's Order to submit Declaration of Financial Hardship (DFH) within 14 days, and Order to serve the Record Before the Agency (RBA) within 60 days. **[0.1 eliminated in the exercise of billing judgment]**

Date: 3/9/2018 0.0 Staff: Angela Nedd
Finalize correspondence to client regarding case status. **[0.3 eliminated in**

the exercise of billing judgment]

Date: 3/16/2018 0.1 Staff: Amie Leonard

Review and analyze transmitted BVA decision for accuracy.

Date: 3/22/2018 0.1 Staff: Amie Leonard

Continue to review and analyze transmitted BVA decision for accuracy; check issue regarding same.

Date: 3/23/2018 0.0 Staff: Amie Leonard

Draft and finalize motion to extend time to file response to Court's Order requiring that the appellant file a fee agreement and DFH within fourteen days **[0.2 eliminated in the exercise of billing judgment]**.

Date: 5/3/2018 0.1 Staff: Amie Leonard

Teleconference with client regarding status of case initiation documents (0.0) **[0.2 eliminated in the exercise of billing judgment]**; review Secretary's Certificate of Service of the Record Before the Agency (RBA) and evaluate next steps (0.1).

Date: 5/4/2018 0.2 Staff: Amie Leonard

Correspondence with client regarding case initiation and questions regarding same.

Date: 5/7/2018 0.0 Staff: Amie Leonard

Correspondence with VA General Counsel to obtain position regarding motion to stay proceedings pending receipt of case initiation documents (0.1); teleconference with client regarding status of his case initiation documents (0.1); draft and finalize motion to stay proceedings (0.4). **[Entire 0.6 eliminated in the exercise of billing judgment]**

Date: 5/8/2018 0.0 Staff: Amie Leonard

Draft and finalize correspondence to client regarding case status **[0.3 eliminated in the exercise of billing judgment]**.

Date: 5/15/2018 0.0 Staff: Amie Leonard
Teleconference with client regarding status, and draft correspondence to client regarding same **[0.1 eliminated in the exercise of billing judgment]**.

Date: 5/17/2018 0.3 Staff: Amie Leonard
Review correspondence from client regarding case initiation and finalize retainer agreement and DFH.

Date: 5/22/2018 0.0 Staff: Amie Leonard
Review Court Order lifting the stay of proceedings and Order to respond to Record Before the Agency (RBA). **[0.1 eliminated in the exercise of billing judgment]**

Date: 6/4/2018 0.0 Staff: Amie Leonard
Correspondence with VA General Counsel to obtain position regarding motion to extend time to respond to RBA; draft and finalize motion to extend time to respond to RBA. **[0.3 eliminated in the exercise of billing judgment]**

Date: 6/5/2018 0.1 Staff: Amie Leonard
Draft correspondence to client regarding case status.

Date: 6/22/2018 0.1 Staff: Kulia Petzoldt
Draft detailed correspondence to client regarding next steps in appeal, including projected timeline of appeal.

Date: 6/25/2018 0.3 Staff: Kulia Petzoldt
Continue drafting detailed correspondence to client regarding next steps in appeal, including projected timeline of appeal.

Date: 6/25/2018 0.1 Staff: Amie Leonard
Finalize correspondence to client regarding next steps in appeal.

Date: 7/3/2018 2.5 Staff: Amie Leonard
Review and analyze 3,298-page RBA to ensure legibility and completeness.

Date: 7/6/2018 0.1 Staff: Amie Leonard
Review Notice to file Appellant's Brief within 60 days in order to provide update to client.

Date: 7/20/2018 0.2 Staff: Amie Leonard
Draft correspondence to client regarding case status.

Date: 7/21/2018 0.1 Staff: Amie Leonard
Review docket regarding Court Order scheduling Rule 33 Staff Conference in order to provide update to client (0.1); draft email to VA General Counsel and Court Central Legal Staff (CLS) regarding motion to reschedule Rule 33 Staff Conference **[0.1 eliminated in the exercise of billing judgment]**.

Date: 7/23/2018 0.0 Staff: Amie Leonard
Draft and finalize motion to reschedule the Rule 33 Staff Conference. **[0.2 eliminated in the exercise of billing judgment]**

Date: 8/31/2018 5.5 Staff: Amie Leonard
Begin review and analysis of 3,298-page RBA and take detailed notes for preparation of Rule 33 Summary of the Issues (0.7); draft Rule 33 Summary of the Issues (2.9); finalize 6-page Rule 33 Summary of the issues (1..4); review and analyze relevant evidence to prepare attachment to Rule 33 Summary of the Issues (0.1); draft email to VA General Counsel and CLS regarding Rule 33 Staff Conference and Summary of Issues, with attachment (0.1); draft and finalize Rule 33 Certificate of Service (0.2); draft correspondence to client regarding Rule 33 Summary of the Issues and settlement authority, with enclosure (0.1).

Date: 9/4/2018 0.1 Staff: Amie Leonard
Teleconference with client regarding Rule 33 Staff Conference, Summary of the Issues, and settlement authority.

Date: 9/14/2018 0.6 Staff: Amie Leonard
Prepare for Rule 33 Staff Conference, including review of Rule 33 Summary of the Issues and relevant evidence (0.2); participate in Rule 33 Staff Conference (0.2); draft detailed notes regarding outcome of Rule 33 Staff Conference in order to provide update to client and for preparation of the initial brief (0.2).

Date: 9/17/2018 0.2 Staff: Amie Leonard
Teleconference with client regarding outcome of Rule 33 Staff Conference (0.1); draft correspondence to client regarding case status and outcome of Rule 33 Staff Conference (0.1).

Date: 9/18/2018 0.1 Staff: Amie Leonard
Teleconference with client regarding case status and question regarding next steps.

Date: 10/12/2018 0.0 Staff: Amie Leonard
Correspondence with VA General Counsel to obtain position regarding motion for extension of time within which to file initial brief (0.1); draft and finalize motion for extension of time within which to file initial brief (0.2). **[Entire 0.3 eliminated in the exercise of billing judgment]**

Date: 11/12/2018 3.2 Staff: Amie Leonard
Draft initial brief, Statement of Facts (3.0); continue to draft Statement of Facts (0.2).

Date: 11/13/2018 0.2 Staff: Amie Leonard
Evaluate litigation strategy for preparation of initial brief argument; outline argument.

Date: 11/13/2018 0.2 Staff: Stacy A. Tromble
Conference with A. Leonard regarding brief arguments and litigation strategy and finalize outline of initial brief argument.

Date: 11/15/2018 4.0 Staff: Amie Leonard
Draft Statement of the Case and argument, I (1.6); draft argument, II (2.4).

Date: 11/16/2018 4.4 Staff: Amie Leonard
Draft inserts to argument (2.6); draft Summary of the Argument, Statement of the Issues, and conclusion (0.5); finalize draft of initial brief, including insert to argument and inserts to Statement of Facts to tailor to argument (1.3).

Date: 11/20/2018 2.3 Staff: Stacy A. Tromble
Review initial brief and add draft final additional argument for A. Leonard; legal advice to A. Leonard regarding final inserts to be added by her.

Date: 11/20/2018 0.5 Staff: Amie Leonard
Draft inserts to add persuasive value and clarity to legal argument.

Date: 11/21/2018 2.0 Staff: Amie Leonard
Update legal and RBA citations to bolster legal argument (1.0); finalize Table of Authorities (0.5); finalize 17-page initial brief, to include final inserts to add persuasive value and clarity to legal argument (0.5).

Date: 12/10/2018 0.2 Staff: Amie Leonard
Teleconference with client regarding case status.

Date: 1/16/2019 0.1 Staff: Amie Leonard
Correspondence with VA General Counsel regarding position on motion for extension of time within which to file responsive brief.

Date: 2/15/2019 0.1 Staff: Amie Leonard
Teleconference with client regarding case status.

Date: 3/1/2019 0.1 Staff: Amie Leonard
Review docket regarding Secretary's finalized brief and reply brief deadline in order to provide update to client.

Date: 3/4/2019 0.1 Staff: Amie Leonard
Draft and finalize correspondence to client regarding case status and responsive brief for review, with enclosures.

Date: 3/12/2019 0.0 Staff: Amie Leonard
Correspondence with VA General Counsel to obtain position regarding motion for extension of time to file initial brief (0.1); draft and finalize motion for extension of time to file reply brief (0.2). **[Entire 0.3 eliminated in the**

exercise of billing judgment]

Date: 3/28/2019 0.0 Staff: Angela Nedd
Draft and finalize correspondence to client regarding case status and responsive brief for review, with enclosures **[0.2 eliminated in the exercise of billing judgment]**.

Date: 4/18/2019 2.5 Staff: Amie Leonard
Review 24-page responsive brief for preparation of reply brief; outline Secretary's argument for preparation of reply brief argument outline; review cases cited by Secretary in order to respond to argument.

Date: 4/22/2019 4.3 Staff: Amie Leonard
Outline reply brief argument (1.8); draft reply brief argument (2.5).

Date: 4/23/2019 5.0 Staff: Amie Leonard
Continue to draft reply brief argument (3.0); review and add inserts to reply brief argument (2.0).

Date: 4/25/2019 1.0 Staff: Janee LeFrere
Add insert of legal authority for A. Leonard (0.5); update legal and RBA citations and finalize Table of Authorities. (0.5)

Date: 4/26/2019 0.0 Staff: Stacy A. Tromble
Review briefs and RBA evidence in preparation for review of reply brief **[0.9 eliminated in the exercise of billing judgment]**.

Date: 4/28/2019 3.1 Staff: Stacy A. Tromble
Review reply brief and add additional argument, for A. Leonard.

Date: 4/29/2019 3.5 Staff: Amie Leonard
Draft style edits to add persuasive value to legal argument (2.7); update legal authority (0.5); teleconference with client regarding reply brief (0.2); finalize 15-page reply brief (0.1).

Date: 5/13/2019 0.1 Staff: Amie Leonard
Review and analyze Record of Proceedings (ROP) to ensure legibility and completeness.

Date: 8/18/2019 0.0 Staff: John Niles
Review and analyze leadings **[0.3 eliminated in the exercise of billing judgment]**.

Date: 9/9/2019 0.9 Staff: John Niles
Evaluate case status, including filings, for preparation for oral argument. **[0.9 eliminated in the exercise of billing judgment]**

Date: 9/10/2019 0.0 Staff: Barton F. Stichman
Conference with S. Tromble and J. Niles regarding preparation for oral argument **[0.3 eliminated in the exercise of billing judgment]**.

Date: 9/10/2019 0.0 Staff: Amie Leonard
Review briefs and conference with S. Tromble and J. Niles regarding oral argument **[1.4 eliminated in the exercise of billing judgment]**.

Date: 9/10/2019 0.0 Staff: Stacy A. Tromble
Conference with A. Leonard and J. Niles regarding oral argument **[1.1 eliminated in the exercise of billing judgment]**.

Date: 9/10/2019 0.9 Staff: John Niles
Review briefs and conference with S. Tromble and A. Leonard regarding oral argument; and evaluate same.

Date: 9/11/2019 0.9 Staff: John Niles
Prepare for oral argument, begin to draft outline of oral argument presentation.

Date: 9/11/2019 0.2 Staff: Angela Nedd
Draft and finalize correspondence to client regarding case status.

Date: 9/12/2019 0.2 Staff: John Niles
Prepare for oral argument, add insert to beginning of draft outline of oral argument presentation.

Date: 9/14/2019 1.0 Staff: John Niles
Prepare for oral argument, continue to draft outline of oral argument presentation.

Date: 9/18/2019 0.7 Staff: John Niles
Prepare for oral argument, add insert to draft outline of oral argument presentation.

Date: 9/26/2019 0.1 Staff: John Niles
Prepare for oral argument, finalize draft outline of oral argument presentation.

Date: 9/27/2019 1.5 Staff: John Niles
Prepare for oral argument, begin to analyze briefs' cited authorities against propositions for which cited and take detailed notes regarding same.

Date: 9/30/2019 0.0 Staff: Kimberly R. Parke
Prepare for oral argument, review briefing and review and add insert to outline.
[1.4 eliminated in the exercise of billing judgment]

Date: 9/30/2019 1.8 Staff: John Niles
Prepare for oral argument, continue to analyze briefs' cited authorities against propositions for which cited and take detailed notes regarding same.

Date: 10/1/2019 0.0 Staff: Kimberly R. Parke
Prepare for oral argument, continue to review briefing and J. Niles draft outline for oral argument presentation and add insert to same. **[1.8 eliminated in the exercise of billing judgment]**

Date: 10/1/2019 5.5 Staff: John Niles
Prepare for oral argument, continue to analyze briefs' cited authorities against

propositions for which cited and take detailed notes regarding same (3.0); continue to prepare for oral argument, continue to analyze briefs' cited authorities against propositions for which cited and take detailed notes regarding same (2.5).

Date: 10/2/2019 2.5 Staff: John Niles
Prepare for oral argument, continue to analyze briefs' cited authorities against propositions for which cited and take detailed notes regarding same.

Date: 10/2/2019 0.0 Staff: Kimberly R. Parke
Review relevant law for inclusion in oral argument. **[1.0 eliminated in the exercise of billing judgment]**

Date: 10/3/2019 1.5 Staff: John Niles
Prepare for oral argument, continue to analyze briefs' cited authorities against propositions for which cited and take detailed notes regarding same (1.5); correspond with co-counsel regarding moot argument. **[0.3 eliminated in the exercise of billing judgment]**.

Date: 10/3/2019 0.0 Staff: Richard V. Spataro
Correspondence with J. Niles regarding oral argument. **[0.1 eliminated in the exercise of billing judgment]**

Date: 10/3/2019 0.0 Staff: Kimberly R. Parke
Prepare for oral argument. **[3.7 eliminated in the exercise of billing judgment]**

Date: 10/4/2019 0.0 Staff: Kimberly R. Parke
Prepare for oral argument. **[0.5 eliminated in the exercise of billing judgment]**

Date: 10/4/2019 2.3 Staff: John Niles
Prepare for oral argument, analyze K. Parke research and authorities underlying same (0.0) **[3.0 eliminated in the exercise of billing judgment]**; continue to prepare for oral argument, review additional authority (2.3)

Date: 10/6/2019 8.5 Staff: John Niles

Prepare for oral argument, draft oral argument presentation (3.0); continue to prepare for oral argument, continue to draft oral argument presentation (3.0); continue to prepare for oral argument, begin to draft outline of anticipated questions and responses to same (2.5).

Date: 10/7/2019 6.0 Staff: John Niles

Prepare for oral argument, continue to draft outline of anticipated questions and responses to same (3.0); continue to prepare for oral argument, continue to draft outline of anticipated questions and responses to same (1.0); continue to prepare for oral argument, prepare for and conference with B. Stichman, K. Parke, and S. Tromble regarding oral argument strategy, outline, preparation, and moot. (2.0)

Date: 10/7/2019 0.0 Staff: Karen Galla

Review briefs and BVA decision to prepare for moot argument. **[1.4 eliminated in the exercise of billing judgment]**

Date: 10/7/2019 0.0 Staff: Stacy A. Tromble

Review briefs and conference with B. Stichman, K. Parke, and J. Niles regarding oral argument strategy, outline, preparation, and moot **[2.2 eliminated in the exercise of billing judgment]**.

Date: 10/7/2019 0.0 Staff: Barton F. Stichman

Conference with J. Niles, K. Parke, and S. Tromble regarding oral argument strategy, outline, preparation, and moot **[1.4 eliminated in the exercise of billing judgment]**.

Date: 10/7/2019 0.0 Staff: Kimberly R. Parke

Review case law in preparation of oral argument (0.0); continue to review case law in preparation of oral argument (0.0). **[5.0 eliminated in the exercise of billing judgment]**

Date: 10/7/2019 0.8 Staff: Janee LeFrere

Prepare legal authority for oral argument, and additional relevant materials for J. Niles.

Date: 10/8/2019 0.0 Staff: Kimberly R. Parke
Review cases law cited in response brief (0.0); continue to review case law cited in responsive brief (0.0). **[Entire 4.0 eliminated in the exercise of billing judgment]**

Date: 10/8/2019 0.0 Staff: John Niles
Prepare for oral argument, revise draft oral argument presentation in light of team comments **[1.0 eliminated in the exercise of billing judgment]**.

Date: 10/9/2019 0.0 Staff: Kimberly R. Parke
Review cases law cited in response brief; continue to review case law cited in responsive brief. **[5.4 eliminated in the exercise of billing judgment]**

Date: 10/9/2019 3.3 Staff: John Niles
Prepare for oral argument, prepare oral argument presentation and revise same (3.0); continue to prepare for oral argument, continue to prepare for for oral argument presentation and revise same (0.3).

Date: 10/10/2019 0.0 Staff: Kimberly R. Parke
Prepare for oral argument, research possible supplemental authorities **[3.0 eliminated in the exercise of billing judgment]**; continue to prepare for oral argument, continue to research possible supplemental authorities (0.0) **[3.0 eliminated in the exercise of billing judgment]**; continue to prepare for oral argument, analyze and propose revisions to oral argument presentation (0.0) **[1.0 eliminated in the exercise of billing judgment]**.

Date: 10/10/2019 4.4 Staff: John Niles
Prepare for oral argument, prepare for and participate in moot (3.0); continue to prepare for oral argument, revise oral argument presentation and outline of anticipated questions and responses based on moot (1.4).

Date: 10/10/2019 3.2 Staff: Stacy A. Tromble
Prepare for and participate in oral argument moot.

Date: 10/10/2019 2.7 Staff: Barton F. Stichman
Prepare for and participate in oral argument moot.

Date: 10/11/2019 0.0 Staff: Emily Jenkins
Review relevant law regarding due process and credibility for inclusion in oral argument for K. Parke **[2.0 eliminated in the exercise of billing judgment]**.

Date: 10/11/2019 2.0 Staff: John Niles
Prepare for oral argument, continue to practice oral argument presentation and to revise same in light of practice and comments received (2.0)
[additional 2.0 eliminated in the exercise of billing judgment].

Date: 10/11/2019 0.0 Staff: Kimberly R. Parke
Continue to review case law cited in briefs in preparation for oral argument.
[6.2 eliminated in the exercise of billing judgment]

Date: 10/13/2019 0.0 Staff: Christopher G. Murray
Moot preparation and legal advice to lead attorney. **[2.0 eliminated in the exercise of billing judgment]**

Date: 10/13/2019 0.0 Staff: Kimberly R. Parke
Review relevant law for inclusion in oral argument. **[2.5 eliminated in the exercise of billing judgment]**

Date: 10/14/2019 3.5 Staff: Kimberly R. Parke
Review ROP and draft detailed timeline of events in preparation for oral argument (3.0); continue to review ROP and draft detailed timeline of events in preparation for oral argument (0.5); review relevant law for inclusion in oral argument (0.0) **[2.7 eliminated in the exercise of billing judgment]**.

Date: 10/14/2019 0.0 Staff: Christopher G. Murray
Moot preparation and legal advice to lead attorney. **[1.4 eliminated in the exercise of billing judgment]**

Date: 10/14/2019 1.0 Staff: John Niles
Prepare for oral argument.

Date: 10/14/2019 0.0 Staff: Emily Jenkins

Continue to review relevant law regarding due process and credibility for inclusion in oral argument for K. Parke **[2.5 eliminated in the exercise of billing judgment]**.

Date: 10/15/2019 3.5 Staff: John Niles

Prepare for oral argument, continue to prepare oral argument presentation (0.0) **[3.0 eliminated in the exercise of billing judgment]**; continue to prepare for oral argument, participate in moot and revise oral argument presentation and outline of anticipated questions and responses in light of same (3.0); continue to prepare for oral argument, continue to revise oral argument presentation and outline of anticipated questions and responses in light of moot (0.5).

Date: 10/15/2019 0.0 Staff: Karen Galla

Review RBA and draft questions for moot (3.0); participate in moot (1.2). **[Entire 4.2 eliminated in the exercise of billing judgment]**

Date: 10/15/2019 2.0 Staff: Kimberly R. Parke

Review congressional intent for inclusion in oral argument **[6.0 eliminated in the exercise of billing judgment]**; participate in moot (2.0).

Date: 10/15/2019 0.0 Staff: Christopher G. Murray

Prepare to and participate in moot. **[2.5 eliminated in the exercise of billing judgment]**

Date: 10/15/2019 0.0 Staff: Emily Jenkins

Continue to review relevant law regarding due process and credibility for inclusion in oral argument for K. Parke **[3.0 eliminated in the exercise of billing judgment]**.

Date: 10/15/2019 0.0 Staff: Stacy A. Tromble

Review RBA; draft notes regarding outline **[1.3 eliminated in the exercise of billing judgment]**; participate in moot **[2.0 eliminated in the exercise of billing judgment]**.

Date: 10/15/2019 0.0 Staff: Barton F. Stichman

Participate in moot. **[1.9 eliminated in the exercise of billing judgment]**

Date: 10/16/2019 0.0 Staff: Christopher G. Murray
Legal advice to lead attorney regarding oral argument **[0.8 eliminated in the exercise of billing judgment]**.

Date: 10/16/2019 0.0 Staff: Kimberly R. Parke
Review relevant law on waiver of issues for inclusion in oral argument. **[1.6 eliminated in the exercise of billing judgment]**

Date: 10/16/2019 0.0 Staff: John Niles
Prepare for oral argument, analyze and supplement research regarding new legal issues potentially arising at oral argument. **[2.6 eliminated in the exercise of billing judgment]**

Date: 10/16/2019 0.0 Staff: Emily Jenkins
Continue to review relevant law regarding due process and credibility for inclusion in oral argument for K. Parke. **[1.3 eliminated in the exercise of billing judgment]**

Date: 10/17/2019 0.0 Staff: Stacy A. Tromble
Prepare for and participate in moot. **[2.0 eliminated in the exercise of billing judgment]**

Date: 10/17/2019 0.0 Staff: Kimberly R. Parke
Review cases from panel members on issues presented in preparation for oral argument. **[6.9 eliminated in the exercise of billing judgment]**

Date: 10/17/2019 0.0 Staff: Barton F. Stichman
Prepare for and participate in moot. **[2.3 eliminated in the exercise of billing judgment]**

Date: 10/17/2019 2.3 Staff: John Niles
Prepare for oral argument, including preparation for and participation in moot and follow-up regarding same (1.8); draft and finalize notice of supplemental

authorities (0.5). **[Additional 6.2 eliminated in the exercise of billing judgment]**

Date: 10/17/2019 0.0 Staff: Christopher G. Murray
Participate in moot and legal advice to lead attorney. **[2.1 eliminated in the exercise of billing judgment]**

Date: 10/18/2019 0.0 Staff: John Niles
Prepare for oral argument, research issue newly raised at moot. **[2.1 eliminated in the exercise of billing judgment]**

Date: 10/19/2019 0.0 Staff: John Niles
Continue to prepare for oral argument. **[7.5 eliminated in the exercise of billing judgment]**

Date: 10/20/2019 0.0 Staff: John Niles
Continue to prepare for oral argument. **[3.0 eliminated in the exercise of billing judgment]**

Date: 10/20/2019 0.0 Staff: Kimberly R. Parke
Prepare for oral argument; continue to prepare for oral argument. **[4.8 eliminated in the exercise of billing judgment]**

Date: 10/21/2019 0.2 Staff: Kimberly R. Parke
Continue to prepare for oral argument **[7.5 eliminated in the exercise of billing judgment]**; teleconference with client regarding oral argument (0.2).

Date: 10/21/2019 0.0 Staff: Christopher G. Murray
Participate in moot and legal advice to lead attorney. **[2.0 eliminated in the exercise of billing judgment]**

Date: 10/21/2019 0.0 Staff: Barton F. Stichman
Participate in moot. **[1.5 eliminated in the exercise of billing judgment]**

Date: 10/21/2019 0.0 Staff: Stacy A. Tromble
Prepare for and participate in moot. **[1.7 eliminated in the exercise of billing judgment]**

Date: 10/21/2019 4.7 Staff: John Niles
Continue to prepare for oral argument, prepare for and participate in moot (1.7) **[Additional 7.2 eliminated in the exercise of billing judgment]**; continue to prepare for oral argument, revise oral argument presentation and supplement outline of questions and responses based on new comments during moot, and prepare revised oral argument presentation (3.0).

Date: 10/22/2019 0.0 Staff: Kimberly R. Parke
Continue to prepare for oral argument. **[4.7 eliminated in the exercise of billing judgment]**

Date: 10/22/2019 7.8 Staff: John Niles
Continue to prepare for oral argument, finalize oral argument presentation and responses to likely questions (3.0); continue to prepare for oral argument, continue to finalize oral argument presentation and responses to likely questions (3.0); continue to prepare for oral argument, continue to finalize oral argument presentation and responses to likely questions (1.8).

Date: 10/23/2019 0.0 Staff: John Niles
Prepare for oral argument, continue to finalize oral argument presentation and responses to likely questions (3.0); continue to prepare for oral argument, continue to finalize oral argument presentation and responses to likely questions (3.0); continue to prepare for oral argument, continue to finalize oral argument presentation and responses to likely questions (3.0); continue to prepare for oral argument, continue to finalize oral argument presentation and responses to likely questions (3.0); continue to prepare for oral argument, review relevant law to have present at oral argument (1.0). **[Entire 13.0 hours eliminated in the exercise of billing judgment]**

Date: 10/23/2019 0.0 Staff: L. Michael Marquet
Review relevant law for inclusion in oral argument for K. Parke and J. Niles. **[1.1 eliminated in the exercise of billing judgment]**

Date: 10/23/2019 0.0 Staff: Kimberly R. Parke
Continue to prepare for oral argument. **[8.4 eliminated in the exercise of billing judgment]**

Date: 10/23/2019 0.0 Staff: Janee LeFrere
Review relevant evidence in VBMS for oral argument. **[1.7 eliminated in the exercise of billing judgment]**

Date: 10/24/2019 0.0 Staff: Christine Cote Hill
Prepare for oral argument; response to question regarding potential issue. **[1.0 eliminated in the exercise of billing judgment]**

Date: 10/24/2019 1.3 Staff: Kimberly R. Parke
Prepare for oral argument **[4.3 eliminated in the exercise of billing judgment]**; participate as second chair at oral argument (1.3).

Date: 10/24/2019 7.6 Staff: John Niles
Prepare for oral argument (3.0); continue to prepare for oral argument (1.7); present oral argument (1.3); analyze oral argument in order to provide update to client (1.5); teleconference with client regarding oral argument and case status (0.1).

Date: 10/25/2019 0.0 Staff: John Niles
Continue to analyze and debrief regarding oral argument and next steps. **[3.5 eliminated in the exercise of billing judgment]**

Date: 10/27/2019 0.0 Staff: John Niles
Continue to analyze and debrief regarding oral argument and next steps. **[1.5 eliminated in the exercise of billing judgment]**

Date: 10/28/2019 0.0 Staff: John Niles
Continue to analyze and debrief regarding oral argument and next steps. **[1.3 eliminated in the exercise of billing judgment]**

Date: 1/7/2020 0.1 Staff: John Niles

Teleconference with client regarding case status.

Date: 1/16/2020 0.0 Staff: John Niles
Analyze new CAVC precedential decision for relevance to case; evaluate that no Rule 30 submission is warranted. **[0.5 eliminated in the exercise of billing judgment]**

Date: 2/11/2020 0.1 Staff: John Niles
Draft correspondence to client regarding case status.

Date: 2/12/2020 0.1 Staff: John Niles
Correspondence with client answering questions regarding case status.

Date: 3/21/2020 0.8 Staff: John Niles
Draft detailed correspondence to client regarding case status and effect of likely outcomes on legal position with VA (0.8)

Date: 3/23/2020 0.0 Staff: John Niles
Update internal file. **[0.2 eliminated in the exercise of billing judgment]**

Date: 4/27/2020 1.5 Staff: John Niles
Review and analyze Panel Opinion in order to provide update to client (0.8); draft correspondence to client regarding Panel Opinion, with enclosure, and close of case and recommendations regarding Panel Opinion (0.7).

Date: 4/27/2020 0.0 Staff: Barton F. Stichman
Review and analyze Panel Opinion **[0.3 eliminated in the exercise of billing judgment]**.

Date: 7/20/2020 3.9 Staff: Jack McCaffrey
Draft application for reasonable attorneys' fees and expenses under the Equal Access to Justice Act (EAJA), including recitation of relevant procedural history (1.6) **[additional 2.0 eliminated in the exercise of billing judgment]**; prepare list of itemized hours to be attached as exhibit to EAJA application (2.3) **[additional 1.0 eliminated in the exercise of billing judgment]**.

Date: 7/24/2020 0.0 Staff: L. Michael Marquet
Add inserts to application for attorney's fees and list of itemized hours **[1.0 eliminated in the exercise of billing judgment]**.

Date: 7/28/2020 2.0 Staff: John Niles
Add insertion to application for reasonable attorneys' fees and expenses under the EAJA (0.8), and elimination of hours in the interest of billing judgment (1.2).

Date: 8/3/2020 0.0 Staff: Christine Cote Hill
Review and add inserts to application. Review itemized list and eliminate more hours than recommended in billing judgment and legal advice to J. Niles regarding same. **[1.7 eliminated in the exercise of billing judgment]**

Date: 8/10/2020 0.6 Staff: Kevin Adams
Finalize application for J. Niles, to include adding detail to application and itemized list.

CERTIFICATION

As lead counsel in this appeal, I have reviewed the combined billing statement above and I am satisfied that it accurately reflects the work performed by all counsel and others entitled to be included above and I have considered and eliminated all time that I believe could be considered excessive or redundant.

Date: August 11, 2020

/s/ John Niles
John Niles

EXHIBIT B



Databases, Tables & Calculators by Subject

Change Output Options:

From: 1996 To: 2020

☐ include graphs ☐ include annual averages

GO

[More Formatting Options](#)

Data extracted on: July 1, 2020 (1:32:19 PM)

CPI for All Urban Consumers (CPI-U)

Series Id: CUURS35ASA0,CUUSS35ASA0
Not Seasonally Adjusted
Series Title: All items in Washington-Arlington-Alexandria, DC-VA-MD-WV, all urban consumers, not seasonally adjusted
Area: Washington-Arlington-Alexandria, DC-VA-MD-WV
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	156.8		158.4		159.0		160.1		160.8		161.2		159.6	158.3	160.8
1997	161.6		161.9		162.1		162.9		163.6		161.8		162.4	162.0	162.8
1998	162.5		163.5		163.6		164.9		165.2		164.5				
1999	165.4		165.9		167.0		168.3		169.8		169.1				
2000	169.8		173.2		172.5		174.8		175.0		175.3				
2001	175.9		177.2		178.0		179.2		180.9		179.5				
2002	180.0		181.9		183.6		184.2		185.8		185.4				
2003	186.3		188.8		188.7		190.2		190.8		190.4				
2004	190.7		192.8		194.1		195.4		196.5		197.2				
2005	198.2		200.4		201.8		202.8		205.6		204.3				
2006	205.6		206.4		209.1		211.4		211.2		210.1				
2007	211.101		214.455		216.097		217.198		218.457		218.331				
2008	220.587		222.554		224.525		228.918		228.871		223.569				
2009	221.830		222.630		223.583		226.084		227.181		226.533				
2010	227.440		228.480		228.628		228.432		230.612		230.531				
2011	232.770		235.182		237.348		238.191		238.725		238.175				
2012	238.994		242.235		242.446		241.744		244.720		243.199				
2013	243.473		245.477		245.499		246.178		247.838		247.264				
2014	247.679		249.591		250.443		250.326		250.634		249.972				
2015	247.127		249.985		251.825		250.992		252.376		251.327		250.664	249.828	251.500
2016	250.807		252.718		254.850		254.305		253.513		253.989		253.422	253.049	253.795
2017	254.495		255.435		255.502		255.518		257.816		257.872		256.221	255.332	257.110
2018	260.219		260.026		261.770		262.016		263.056		261.120		261.445	260.903	261.987
2019	262.304		264.257		265.967		265.170		265.500		265.026		264.777	264.252	265.301
2020	266.433		265.385		265.733										

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EXHIBIT C

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'").