

Virginia A. Girard-Brady
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**IN THE UNITED STATES COURT OF APPEALS FOR VETERANS
CLAIMS**

MARLON V. PHILLIPS,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 19-2953
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	
)	

**APPELLANT’S APPLICATION FOR AN AWARD OF ATTORNEY FEES,
COSTS AND OTHER EXPENSES**

Comes now, Virginia A. Girard-Brady, on behalf of Marlon Phillips, in the above-captioned case, and pursuant to U.S. Vet. App. R. 39 and 28 U.S.C. § 2412, and submits this application for an Award of Attorney Fees, Costs, and Other Expenses within the time frame set by the U.S. Court of Appeals for Veterans Claims Mandate issued July 30, 2020.

In support of this motion, counsel asserts the following:

1. This case was pending on or after October 29, 1992, and the Equal

Access to Justice Act (EAJA) is applicable. *Jones v. Brown*, 41 F.3d 634 (Fed. Cir. 1994).

2. The Appellant is a prevailing party and eligible to receive an award. 28 U.S.C. § 2412(d)(2)(B); (d)(2)(H).
3. A Notice of Appeal was filed with the Court on May 3, 2019.
4. On July 30, 2020, after the Court issued a Memorandum Decision, which vacated and remanded the Board of Veterans Appeals (BVA)'s February 19, 2019 decision, to the extent that it denied a claim for entitlement to service-connected disability benefits for a psychiatric disorder other than PTSD, and for a cannabis and alcohol abuse disorder claimed as secondary to a psychiatric disorder, and for the Board to provide an adequate statement of reasons or bases for those findings and conclusions, on all material issues of fact and law presented on the record.
5. Appellant's net worth is less than two million dollars at the time he filed his Notice of Appeal with this Court on May 3, 2019. (Exhibit 1.) Appellant is thus eligible to receive an award under 28 U.S.C. § 2412(d)(2)(B).
6. The specific position of the Department of Veterans Affairs, that the Secretary had fulfilled its duty to assist the veteran in developing his claim and that the record was thus sufficient for purposes of adjudicating

the merits of the veteran's claim for benefits, was not substantially justified. 28 U.S.C. § 2412(d)(1)(A).

7. No special circumstances, as defined by 28 U.S.C. § 2412(d)(1)(A), exist in this case which would make an attorney fees award unjust. This case was not one of first impression involving a good faith argument; nor did this case involve a new, more stringent requirement for adjudication.
8. Counsel for Appellant has claimed a reasonable fee, predicated upon the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. A statement from the Appellant's attorney itemizing each type of service rendered in this Court through the date of final judgment, in addition to the time spent in preparation of the Appellant's EAJA Application, and noting the actual time expended, costs, expenses, and the rate at which fees are computed, is attached. (Exhibit 2.)
9. The total hours expended total 11.6; the regular hourly rate is \$196.25; the total attorney fee sought is **\$2,276.50**. Counsel waives reimbursement for expenses. Thus, the total amount of fees, costs and expenses is **\$2,276.50**.
10. Counsel for the Appellant has submitted an itemized statement, broken down into general case management tasks, review of records, client interview time, and general case document preparation; all of which are inextricably intertwined to the preparation of the entire case; provides no basis for equitable apportionment.

11. For the equitable regular hourly rate, counsel for Appellant has utilized the fixed starting rate under the EAJA of \$125.00, plus the cost of living calculated pursuant to the CPI-U, the United States Department of Labor's Consumer Price Index for Midwest Urban Consumers, as published by the Bureau of Labor Statistics, as of May, 2019; such date being the approximate point at which the Notice of Appeal was filed in this case, and representation formally undertaken.
12. The claimed hourly rate, reduced rate and attorney fees, costs, and other expenses are reasonable in light of the fact that Appellant was forced to retain counsel to appeal a BVA decision which failed to comply with required procedure.

WHEREFORE, Appellant respectfully requests that the U.S. Court of Appeals for Veterans Claims award his attorney fees, costs, and other expenses, in the total amount of **\$2,276.50**.

Respectfully Submitted,

/s/ Virginia A. Girard-Brady
Virginia A. Girard-Brady
Counsel for Appellant
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**ON APPLICATION FOR AN AWARD OF FEES AND EXPENSES
UNDER THE EQUAL ACCESS TO JUSTICE ACT**

I, Virginia A. Girard-Brady, make the following declaration in support of Appellant's application for an award of attorney fees, costs and other expenses in connection with the above-captioned appeal filed with the U.S. Court of Appeals for Veterans Claims.

ABS Legal Advocates, P.A., was attorney of record for the Appellant in proceedings before the U.S. Court of Appeals for Veterans Claims, and continues as attorney of record in proceedings before the Department of Veterans Affairs. The following itemization of services rendered encompasses representation before

the Court, through the Mandate of July 30, 2020, as well as in pursuance of fees, costs and expenses under the Equal Access to Justice Act (EAJA).

ATTORNEY TIME, COSTS AND OTHER EXPENSES

<u>DATE</u>	<u>ACTIVITY</u>	<u>HOURS</u>
03/05/19	Eva D. Perring (EDP), Esq, reviewed BVA Decision for purposes of appeal; identified basis for appeal and updated case file; drafted correspondence to veteran	1.0
05/03/19	Virginia A. Girard-Brady (AGB), Esq., reviewed correspondence from veteran; prepared NOA, EOA, and Fee Agreement	.2
05/03/09	AGB reviews Notice of Docketing	.1
06/26/19	AGB reviews EOA from Shekeba Morrad, Esq., for the Secretary	.1
07/10/19	EDP reviewed Record Before the Agency (RBA) for purposes of dispute	1.7
07/15/19	AGB reviews Notice to File Brief	.1
08/06/19	AGB reviewed Order in re: Briefing Conference	.1
08/09/19	EDP began drafting Summary of the Issue for the Briefing Conference	.7
08/15/19	Jamie M. Atwood (JMA), Esq, reviewed draft of Summary of the Issue; revised and finalized same and prepared for submission	.3
09/03/19	JMA participated in Briefing Conference with OGC and CLS; case to proceed to briefing	.2

TOTAL HOURS ONLY ON THIS PAGE: 4.5

<u>DATE</u>	<u>ACTIVITY</u>	<u>HOURS</u>
10/17/19	JMA began drafting Appellant's Brief, including Statement of the Case	1.6
10/18/19	JMA completed drafting Appellant's Briefing, including Statement of the Case (.25); revising and expanding argument and drafting Summary of the Argument (2.75); revised/finalized all sections, including tables (1.0)	4.0
12/17/19	AGB reviewed Secretary's Motion to Extend Time to File Response Brief	.1
02/13/20	JMA reviewed Secretary's Response Brief; no basis for Reply Brief	.3
03/11/20	JMA reviewed Record of Proceedings (ROP)	.2
05/05/20	AGB reviews CAVC Memorandum Decision	.2
08/24/20	AGB prepared EAJA Application	.7

TOTAL HOURS ONLY ON THIS PAGE: 7.1

TOTAL HOURS ON ALL PAGES: 11.6

1. According to the U.S. Department of Labor, Bureau of Labor Statistics, the National Consumer Price Index for All MIDWEST Urban Consumers in the United States, as of March 29, 1996, was 155.7; as of May, 2019, it was 238.219. It therefore increased by 57%. Applying this increase to the \$125.00 hourly rate provided by EAJA, **the current hourly rate would be \$196.25.**
2. Applying the rate computed above to the total time expended by counsel for the Appellant equals a total amount in attorney fees of **\$2,276.50.**
3. Counsel for the Appellant does not seek reimbursement for expenses, as such expenses were negligible.

4. I declare and state under penalty of perjury under the laws of the United States of America, that the information set forth in this declaration is true and correct.

Dated this 24th day of August, 2020.

/s/ Virginia A. Girard-Brady
Virginia A. Girard-Brady
Counsel for Appellant
ABS Legal Advocates, P.A.
120 E. 9th Street, Suite 100
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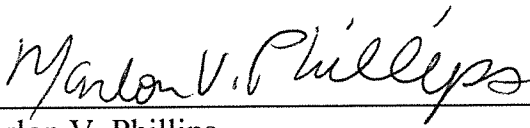
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**APPELLANT'S AFFIRMATION OF NET WORTH AT THE TIME
THAT NOTICE OF APPEAL WAS FILED**

I, Marlon V. Phillips, affirm that my net worth was less than two million dollars at the time I filed my Notice of Appeal with this Court on May 3, 2019.



Marlon V. Phillips

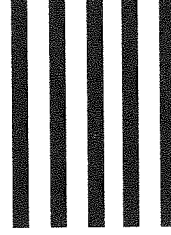
EXHIBIT 1

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