

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

EARL GOODEN)	
Appellant,)	
)	
v.)	CAVC No. 19-2822
)	EAJA
)	
ROBERT L. WILKIE,)	
SECRETARY OF)	
VETERANS AFFAIRS,)	
Appellee)	

APPELLANT'S APPLICATION FOR AN
AWARD OF ATTORNEYS FEES AND EXPENSES
PURSUANT TO 28 U.S.C. § 2412(d)

Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), and the Court's Rule 39, Appellant, through counsel, seeks a total fee in the amount of **\$13,560.39**.

The basis for the application is as follows:

Grounds for an Award

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

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

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

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

A. *The Appellant Is a Prevailing Party*

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

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

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

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

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

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

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

The Court reversed and remanded that portion of the Board's March 22, 2019 decision that denied service connection for diabetes mellitus and erectile dysfunction and set aside and remanded that portion of the decision pertaining to hypertension based upon the Board's failure to rely on an adequate VA examination. See pages 1-8 of the Memorandum Decision. Mandate issued on September 9, 2020. Based upon the foregoing, and because the three-part test promulgated in *Blue* is satisfied, Appellant is a prevailing party.

B. Appellant Is Eligible For An EAJA Award

Appellant also satisfies the EAJA requirement that his net worth at the time his appeal was filed did not exceed \$2,000,000. 28 U.S.C. § 2412(d)(2)(B). Mr. Gooden had a net worth under \$2,000,000 on the date this action was commenced. See Paragraph 3 of the fee agreement filed with the Court. Therefore, Mr. Gooden is a person eligible to receive an award under the EAJA.

C. The Position of the Secretary Was Not Substantially Justified

In *White v. Nicholson*, 412 F.3d 1314 (Fed. Cir. 2004) the Federal Circuit applied the totality of the circumstances test and noted that "EAJA requires that the record must supply the evidence of the Government's substantial justification." 412 F.3d at 1316. The Secretary's position during proceedings before the Agency or

the Court was not reasonable, either in law or in fact, and accordingly the Secretary's position was not substantially justified at either the administrative or litigation stage in this case. The parties in this case agreed to a joint motion for remand based upon the Board's failure to rely on an adequate VA examination. Moreover, there is no evidence that special circumstances exist in Appellant's case that would make an award of reasonable fees and expenses unjust. 28 U.S.C. § 2412(d)(1)(A).

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

Appellant has claimed a reasonable amount of attorneys' fees, predicated upon "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Ussery v. Brown*, 10 Vet. App. 51, 53 (1997) (*quoting Elczyn, 7 Vet. App. at 176-177*).

Eight attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Bradley Hennings, Danielle M. Gorini, April Donahower, Kevin Medeiros, Brittani Howell, Barbara Cook, Amy Odom, and Zachary Stolz.¹

¹"There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the same work and are being compensated for the distinct contribution of each lawyer." *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1301 (11th

Attorney Bradley Hennings graduated from Rutgers University Law School in 2006 and the *Laffey* Matrix establishes that \$510.00 is the prevailing market rate for an attorney with his experience.² Danielle Gorini graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that

Cir. 1988); *see also* *Baldrige v. Nicholson*, 19 Vet.App. 227, 237-38 (2005) (“the fees sought must be ‘based on the distinct contribution of each individual counsel.’”). “The use in involved litigation of a team of attorneys who divide up the work is common today for both plaintiff and defense work.” *Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) *holding modified by* *Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). “Careful preparation often requires collaboration and rehearsal[.]” *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998). As demonstrated in Exhibit A, each attorney involved in the present case provided a distinct, and non-duplicative contribution to the success of the appeal. *See Baldrige*, 19 Vet.App. at 237 (“An application for fees under EAJA where multiple attorneys are involved must also explain the role of each lawyer in the litigation and the tasks assigned to each, thereby describing the distinct contribution of each counsel.”).

²The U.S. Attorney’s Office maintains a matrix, known as the Laffey Matrix, of prevailing market rates for attorneys by years of practice, taking into account annual price increases, pursuant to *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff’d in part by* 746 F.2d.4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021, 105 S. Ct. 3488 (1985). This Court has approved the use of the Laffey Matrix for determining the prevailing market rate for EAJA fees. *See, e.g., Wilson v. Principi*, 16 Vet. App. 509, 213 (2002) (finding the Laffey Matrix a “reliable indicator of fees...particularly as to cases involving fees to be paid by government entities or determined under fee-shifting statutes”), *vacated on other grounds by* 391 F.3d 1203 (Fed. Cir. 2004); *see also* *Sandoval*, 9 Vet. App. at 181 (using the Laffey Matrix as an indicator of prevailing market rate and holding that once a prevailing market rate is established, the government has the burden of producing evidence to show that the rate is erroneous.) *See* Exhibit B (Laffey Matrix).

\$510.00 is the prevailing market rate for an attorney with her experience. April Donahower graduated from Temple University Law School in 2013 and the *Laffey* Matrix establishes that \$372.00 is the prevailing market rate for an attorney with her experience. Kevin Medeiros graduated from Suffolk University Law School in 2015 and the *Laffey* Matrix establishes that \$353.00 is the prevailing market rate for an attorney with his experience. Barbara Cook graduated from University of Michigan Law School in 1977 and the *Laffey* Matrix establishes that \$637.00 is the prevailing market rate for an attorney with her experience. Amy Odom graduated from University of Florida Law School in 2006 and the *Laffey* Matrix establishes that \$510.00 is the prevailing market rate for an attorney with her experience. Zachary Stolz graduated from the University of Kansas School of Law in 2005 and the *Laffey* Matrix establishes that \$510.00 is the prevailing market rate for an attorney with his experience.

Brittani Howell is a 2017 graduate of Syracuse University Law School, and at the time some of her work was performed, she was admitted to practice as a non-attorney practitioner. Ms. Howell has entered her appearance in multiple cases before the Court of Appeals for Veterans Claims. The Court has found that “[I]n formulating an EAJA award to a non-attorney practitioner, once a prevailing market rate is determined for the non-attorney practitioner based on a certain skill

level, reputation, and geographic area, that prevailing market rate can be adjusted over time by application of the appropriate percentage increase of the change in the appropriate consumer price index.” See *Apodackis v. Nicholson*, 19 Vet. App. 91 (2005). Therefore, based on Ms. Howell’s court experience, Appellant seeks attorney’s fees at the rate of \$173.00 per hour for representation services before the Court for her time before she was admitted to practice law on September 6, 2019. After that admittance date, Ms. Howell’s billing rate as an attorney is \$353.00.³

Elizabeth Rowland is a 2014 graduate from Vassar College and began working as a paralegal for Chisholm Chisholm & Kilpatrick in November 2016. Ms. Rowland was admitted to practice as a non attorney practitioner on January 16, 2018. In *McDonald v. Nicholson*, 21 Vet.App. 257 (2007), this Court indicated

³ The US Attorney’s Office maintains a matrix, known as the Laffey Matrix, of prevailing market rates for attorneys by the years of practice, taking into account annual price increases, pursuant to *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff’d in part by* 746 F.2d. 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021, 105 S. Ct. 3488 (1985). This Court has approved the use of the Laffey Matrix for determining the prevailing market rate for EAJA fees. See, e.g., *Wilson v. Principi*, 16 Vet.App. 509, 213 (2002) (finding the Laffey Matrix a “reliable indicator of fees...particularly as to cases involving fees to be paid by government entities or determined under fee-shifting statutes”), *vacated on other grounds by* 391 F.3d 1203 (Fed. Cir. 2004); see also *Sandoval*, 9 Vet. App. at 181 (using the Laffey Matrix an indicator of prevailing market rate and holding that once a prevailing market rate is established, the government has the burden of producing evidence to show that the rate is erroneous.) See Exhibit B (Laffey Matrix).

that non attorney practitioners are entitled to an EAJA award at a lesser rate than the \$125.00 per hour statutory rate for attorneys, plus the cost of living adjustment. Therefore, Ms. Rowland's rate as a non attorney practitioner is \$175.27 per hour.⁴

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$207.80 per hour for Mr. Hennings, Ms. Gorini, Ms. Donahower, Mr. Medeiros, Ms. Howell after her September 6, 2019 admittance date, and Mr. Stolz for representation services before the Court.⁵ This rate per hour, multiplied by the number of hours billed for these six attorneys (25.10) results in a total attorney's fee amount of \$5,215.78.

Appellant seeks attorney's fees at the rate of \$200.81 per hour for Ms. Cook's representation services before the Court.⁶ This rate per hour, multiplied by

⁴ Elizabeth Rowland's resume is attached showing her educational background as well as her experience, including multiple cases she has worked on before the Court of Appeal for Veterans Claims as co-counsel. Her experience level accurately reflects the hourly rate using the formula set forth in *McDonald v. Nicholson*, 21 Vet.App. 257 (2007).

⁵ This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. See *Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to November 2019 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).

⁶ Per the agreement in *Bradley v. Wilkie*, 17-3797, this rate was determined using

the number of hours billed for Ms. Cook (7.10) results in a total attorney's fee amount of \$1,425.75.

Appellant seeks attorney's fees at the rate of \$203.49 per hour for Ms. Odom's representation services before the Court.⁷ This rate per hour, multiplied by the number of hours billed for Ms. Odom (20.30) results in a total attorney's fee amount of \$4,130.84.

In addition, Appellant seeks attorney's fees at the rate of \$173.00 per hour for representation services before the Court for Ms. Howell's time prior to her admittance date. This rate per hour, multiplied by the number of hours billed (14.90) results in a total attorney's fee amount of \$2,577.70.

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

⁷ This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Washington-Arlington-Alexandria, DC-MD-VA-WV. *See Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to November 2019 the chosen mid-point date for the litigation in this case, using the method described in *Elczykyn v. Brown*, 7 Vet. App. 170, 181 (1994).

Appellant seeks attorney's fees at the rate of \$175.27 per hour for Ms. Rowland's representation services before the Court as a non attorney practitioner. This rate per hour, multiplied by the number of hours billed for Ms. Rowland (1.20) results in a total attorney's fee amount of \$210.32.

Based upon the foregoing, the total fee sought is **\$13,560.39.**

I, Zachary M. Stolz, am the lead counsel in this case. I certify that I have reviewed the combined billing statement and am satisfied that it accurately reflects the work performed by all representatives. I have considered and eliminated all time that I believe, based upon my over ten years of practicing before this Court, is either excessive or redundant

Respectfully submitted,
Earl Gooden
By His Attorneys,
CHISHOLM CHISHOLM & KILPATRICK
/s/Zachary M. Stolz
321 S Main St #200
Providence, Rhode Island 02903
(401) 331-6300
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9/10/2020

Exhibit A

Time from 10/1/2018 to 9/10/2020

Case No. 267501**Client: Gooden, Mr. Earl**

				<u>Hours</u>
3/26/2019	BRADLEY	Review BVA decision. Conduct legal research. Recommend case for appeal.		0.40
4/29/2019	DANIELLE	Reviewed and emailed notice of appeal, notice of appearance for ZMS as lead counsel, fee agreement, and declaration of financial hardship to the Court. Received, reviewed, and saved Court confirmation email to the file. Updated file.		0.20
5/1/2019	DANIELLE	Reviewed docket to confirm docketing and to ensure proper filing and docketing of appeal documents. Updated file.		0.10
5/9/2019	BHOWELL	Prepared and filed notice of appearance and updated file.		0.10
5/10/2019	APRIL	Prepared and efiled notice of appearance; updated file.		0.10
5/29/2019	BHOWELL	Received and reviewed BVA dec transmittal and updated the file		0.10
6/4/2019	BHOWELL	Returned client's call, no answer, left message. Note to the file.		0.10
6/5/2019	BHOWELL	Call to client, no answer, left message. Note to the file.		0.10
6/7/2019	BHOWELL	Returned client's call no answer, left message. Note to the file.		0.10
6/11/2019	BHOWELL	Returned client's call and provided a status update		0.10
6/12/2019	BHOWELL	Received and reviewed OGC notice of appearance and updated client file		0.10
6/26/2019	BHOWELL	Received and reviewed RBA Cert of Service; updated file		0.10
7/2/2019	EROWLAND	Received and reviewed notice of receipt of RBA. Updated client file, verified RBA was for correct client.		0.10
7/16/2019	BHOWELL	Drafted status letter to client, and received and reviewed notice to file brief		0.10
7/16/2019	EROWLAND	Reviewed RBA to determine need for dispute		1.10
7/29/2019	BHOWELL	Reviewed screening notes and RBA 1-22		0.50
7/30/2019	BHOWELL	Reviewed RBA 2594-3140		1.20
7/30/2019	BHOWELL	Reviewed RBA 23-2593		2.70
7/31/2019	BHOWELL	Reviewed RBA 3141-4941		2.70
8/6/2019	BHOWELL	Received and reviewed PBC Order, calculated memo due date, and updated client file		0.10
8/14/2019	BHOWELL	Began drafting outline for PBC memo		0.50
8/15/2019	BHOWELL	Continued drafting outline for memo		1.00
8/16/2019	APRIL	Reviewed BVA decision; reviewed outline of arguments for PBC memo for legal and factual accuracy; suggested revisions for accuracy and clarity		0.50
8/16/2019	BHOWELL	Began drafting PBC memo		3.00
8/19/2019	BHOWELL	Continued drafting PBC Memo		0.50
8/19/2019	BHOWELL	Made final revisions to PBC memo, compiled and redacted RBA, emailed memo and RBA to OGC and CLS, prepared and filed cert of serv and drafted letter to client		0.90
8/19/2019	KEVIN	Substantive review of BH's draft PBC memo for accuracy of legal arguments, organization, and flow; made necessary edits and revisions; memo to file re: edits/suggestions.		0.80
8/23/2019	BHOWELL	Received, reviewed, and responded to email from OGC requesting to reschedule the PBC		0.10
9/3/2019	BHOWELL	Reviewed memo and RBA to prepare for conference, participated in conference, and updated client's file with notes post conference		0.70
9/5/2019	BHOWELL	Call to client, no answer, left message. Note to the file.		0.10
9/9/2019	BHOWELL	Call to client, no answer, left message, note to the file.		0.10
9/11/2019	BHOWELL	Call to client, no answer, left message. Note to the file.		0.10

Exhibit A

Time from 10/1/2018 to 9/10/2020

Case No. 267501

Client: Gooden, Mr. Earl

				<u>Hours</u>
9/12/2019	BHOWELL	Call to client, no answer, left message. Note to the file. .		0.10
9/13/2019	BHOWELL	Call to client, no answer, left message and drafted request to contact letter		0.10
9/16/2019	AODOM	Prepared and filed notice of appearance; updated file.		0.20
9/16/2019	BHOWELL	Call to client, discussed his case and next steps, note to the file.		0.20
11/7/2019	AODOM	Began analyzing RBA and outlining statement of facts		2.00
11/10/2019	AODOM	Continued reviewing and analyzing RBA and outlining statement of facts		2.00
11/11/2019	AODOM	Finished reviewing and analyzing RBA and outlining statement of facts		1.40
11/12/2019	AODOM	Finished drafting statement of facts - January 2019 submission and BVA decision.		1.60
11/12/2019	AODOM	Drafted M21-1 Thailand provision argument.		1.70
11/12/2019	AODOM	Drafted direct exposure and reversal arguments.		1.80
11/12/2019	AODOM	Drafted statement of facts until 2019.		3.00
11/16/2019	BARBARA	Review statement of facts and suggest edits to same.		2.60
11/16/2019	BARBARA	Review and suggest edits to arguments, compare to Tolliver, and add some points, suggest reorganizing and focusing more on Hudick.		2.70
11/17/2019	BARBARA	Continue to review and add to argument section - add procedure, expand Hudick, and add argument on Overton		1.80
11/18/2019	AODOM	Implement final edits to brief		0.40
11/18/2019	AODOM	Performed final proofread of brief; filed brief; updated file.		0.80
11/18/2019	AODOM	Drafted statement of issues, summary of argument, and conclusion.		1.30
3/2/2020	AODOM	Reviewed case notes and concession of error in VA's brief.		0.30
3/25/2020	BHOWELL	Reviewed opening and response brief, reviewed litigation strategy notes, and drafted outline for reply brief		2.90
3/30/2020	BHOWELL	Added to outline for reply brief		0.50
4/3/2020	AODOM	Reviewed parties' briefs and draft outline, edited outline.		1.50
4/21/2020	BHOWELL	Began drafting reply brief		2.70
4/23/2020	BHOWELL	Continued drafting reply brief		0.60
4/23/2020	BHOWELL	Continued drafting reply brief		2.00
4/24/2020	BHOWELL	Continued drafting reply brief		1.70
4/25/2020	BHOWELL	Completed drafting reply brief		1.80
4/27/2020	AODOM	Began reviewing and suggested edits to reply brief.		1.50
4/28/2020	AODOM	Finished reviewing and suggesting edits to reply brief.		0.80
4/29/2020	BHOWELL	Reviewed comments and suggestions and began revising draft reply brief		1.30
4/29/2020	BHOWELL	Continued revising draft reply brief		2.40
4/30/2020	BHOWELL	Reviewed comments and suggestions and made additional revisions to reply brief		0.50
4/30/2020	BHOWELL	Finalized reply brief, checked record and case citations for accuracy, and e-filed, and updated client file		1.00
5/22/2020	BHOWELL	Reviewed ROP for completeness and filed response to ROP		0.60
5/26/2020	BHOWELL	Received and reviewed Judge assignment and updated client file		0.10

Exhibit A**Time from 10/1/2018 to 9/10/2020****Case No. 267501****Client: Gooden, Mr. Earl**

			<u>Hours</u>
6/18/2020	BHOWELL	Received and reviewed mem dec, reviewed pleadings to ensure all issues were covered, took notes on mem decs findings, drafted memo to the file re: outcome	0.90
6/25/2020	ZACH	Reviewed Court decision, pleadings, and notes in case. Prepared letter to client concerning Court's decision. Ensured case file was updated with necessary letters, pleadings, and correspondence so that client could be properly informed of case progress, disposition, and next steps.	0.70
6/30/2020	BHOWELL	Call to client, no answer, left message. Note to the file.	0.10
7/2/2020	BHOWELL	Call to client, no answer, could not leave message. Note to the file.	0.10
7/9/2020	BHOWELL	Call to client, no answer, left message. Note to the file	0.10
7/10/2020	BHOWELL	Call to client, discussed mem dec and what Judge decided, received and reviewed judgment, and updated client file	0.20
7/22/2020	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
9/9/2020	BHOWELL	Call to client, discussed mandate entering and addressed client's questions	0.20
9/9/2020	BHOWELL	Received and reviewed mandate from court and updated client file	0.10
9/9/2020	BHOWELL	Call to client, no answer, left message, and updated client file	0.10
9/10/2020	DANIELLE	Prepared and e filed Notice of Appearance. Received, reviewed, and saved Court confirmation email. Checked docket sheet to ensure proper filing. Updated case file.	0.20
9/10/2020	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.00
9/10/2020	ZACH	Reviewed EAJA Application for proofreading purposes and to ensure billing accuracy.	0.30

Timekeeper Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
AODOM	20.3	\$ 203.49	\$ 4,130.84
APRIL	0.6	\$ 207.80	\$ 124.68
BARBARA	7.1	\$ 200.81	\$ 1,425.75
BHOWELL	20.5	\$ 207.80	\$ 4,259.90
BRADLEY	0.4	\$ 207.80	\$ 83.12
DANIELLE	1.5	\$ 207.80	\$ 311.70
EROWLAND	1.2	\$ 175.27	\$ 210.32
KEVIN	0.8	\$ 207.80	\$ 166.24
ZACH	1.3	\$ 207.80	\$ 270.14
BHOWELL	14.9	\$173.00	\$2,577.70
		Total:	\$13,560.39

Elizabeth Rowland

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(401) 331-6300 erowland@cck-law.com

Education and Qualifications

Vassar College, Poughkeepsie, NY

Bachelor of Arts in English, May 2014

Accredited Claims Agent: January 2018

Non-attorney Practitioner, Court of Appeals for Veterans Claims: January 2018

Experience

Employed at Chisholm, Chisholm & Kilpatrick Ltd. November 2016-present

Non-attorney Practitioner, January 2018-present

Drafted summary of issues for pre-briefing conferences, represented clients at telephonic briefing conferences with VA counsel, drafted briefs, reviewed client Records Before the Agency (RBA) in order to determine need for RBA disputes, prepared EAJA applications.

Cases Resulting in a JMR or JMPR:

Norman W. Wheeler, 18-18

Ronald P. Rosa, 18-1789

Wallace Simmons, 18-1816

Michael Burns, 18-2253

Harvey Reed, Jr., 18-2223

Andrea Bounds, 18-3503

Limas Sheppard, Jr., 18-3755

Albert Mack, 18-4097

James Robinson, Jr., 18-4027

Marvin Lunsford, 18-4184

Russell Haston, 18-4594

Ronald Smith, 18-5927

Manuel Cruz, 18-5718

Eligio Perez, 18-7084

Mark D. Phillip-Appellant Brief filed, 18-4057

Christopher Goodenough-Appellant Brief filed, 17-4910

Thaddeus Stewart-Appellant Brief filed, 18-3283

Phillip M. Moses, 18-7123

Tabatha Isom, 19-247

Billy J. Lawson, 18-5155

Editorial Specialist, September 2017-January 2018

Reviewed opening and reply briefs to ensure accuracy and readability prior to submission to Court

Paralegal, November 2016-September 2017

Performed legal research, reviewed veterans' claim files for appeal development, communicated with clients over the phone and in writing, drafted arguments and appeals for submission to various VA regional offices, acquired evidence in support of pending appeals

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'").