

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

RONALD V. GARNER	)	
Appellant,	)	
	)	
v.	)	CAVC No. 18-5865
	)	EAJA
	)	
DENIS MCDONOUGH,	)	
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 **\$25,771.27**.

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).

In a precedential decision, the Court set aside and remanded the Board's August 31, 2018 decision based upon the Board's failure to provide an adequate statement of reasons or bases and based upon the Board's error in relying on inadequate examinations. See pages 1-13 of the Memorandum Decision. Mandate issued on April 20, 2021. 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. Garner 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. Garner 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 Board failed to provide an adequate statement of reasons or bases and erred in relying on inadequate examinations. 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: Jordyn Coad, Danielle M. Gorini, Nicholas Phinney, April Donahower, Brittani Howell, Barbara Cook, Amy Odom, and Zachary Stolz.<sup>1</sup>

---

<sup>1</sup>"There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the same work and are being compensated for the distinct contribution of each lawyer." *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1301 (11th Cir. 1988); *see also Baldridge v. Nicholson*, 19 Vet.App. 227, 237-38 (2005) ("the fees sought must be 'based on the distinct contribution of each individual

Attorney Jordyn Coad graduated from University of Connecticut Law School in 2016 and the *Laffey* Matrix establishes that \$380.00 is the prevailing market rate for an attorney with her experience.<sup>2</sup> Danielle Gorini graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$591.00 is the prevailing market rate for an attorney with her experience.

---

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

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

Nicholas Phinney graduated from Roger Williams University Law School in 2006 and the *Laffey* Matrix establishes that \$532.00 is the prevailing market rate for an attorney with his experience. April Donahower graduated from Temple University Law School in 2013 and the *Laffey* Matrix establishes that \$452.00 is the prevailing market rate for an attorney with her experience. Barbara Cook graduated from University of Michigan Law School in 1977 and the *Laffey* Matrix establishes that \$665.00 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 \$532.00 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 \$591.00 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 \$380.00.<sup>3</sup>

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys’ fees at the rate of \$207.41 per hour for Ms. Coad, Ms. Gorini, Mr. Phinney, Ms. Donahower, Ms. Howell after her admittance date, and Mr. Stolz for representation services before the Court.<sup>4</sup> This rate per

---

<sup>3</sup> 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).

<sup>4</sup> This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. See *Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase



hour, multiplied by the number of hours billed for these six attorneys (88.80) results in a total attorney's fee amount of \$18,418.00.

Appellant seeks attorney's fees at the rate of \$200.34 per hour for Ms. Cook's representation services before the Court.<sup>5</sup> This rate per hour, multiplied by the number of hours billed for Ms. Cook (0.40) results in a total attorney's fee amount of \$80.14.

Appellant seeks attorney's fees at the rate of \$204.21 per hour for Ms. Odom's representation services before the Court.<sup>6</sup> This rate per hour, multiplied by

---

was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to June 2019 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994), .

<sup>5</sup> Per the agreement in *Bradley v. Wilkie*, 17-3797, this rate was determined using 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, June 2019, divided by the data from the Midwest Consumer Price Index-U for December 2017 or 230.548.

<sup>6</sup> This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Washington-Arlington-Alexandria, DC-MD-VA-WV. *See Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to June 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).

the number of hours billed for Ms. Odom (3.00) results in a total attorney's fee amount of \$612.63.

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 (38.50) results in a total attorney's fee amount of \$6,660.50.

Based upon the foregoing, the total fee sought is **\$25,771.27**.

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,  
Ronald V. Garner  
By His Attorneys,  
CHISHOLM CHISHOLM & KILPATRICK  
/s/Zachary M. Stolz  
321 S Main St #200  
Providence, Rhode Island 02903  
(401) 331-6300  
Fax: (401) 421-3185

4/21/2021

# Exhibit A

Time from 10/1/2018 to 4/21/2021

**Case No. 263569****Client: Garner, Mr. Ronald V.**

			<b><u>Hours</u></b>
10/1/2018	JCOAD	Reviewed Board decision to for legal errors, completed legal research and suggested arguments for same. Recommended case for appeal.	0.60
10/18/2018	NICK	Reviewed file & appeal documents. Filed Notice of Appeal, Notice of Appearance for Z. Stolz as lead counsel, DFH & Fee Agreement with the Court. Received, reviewed, & saved Court confirmation email to the file. Updated case file.	0.10
10/22/2018	NICK	Confirmed Court's docketing of appeal; updated client file	0.10
10/24/2018	BHOWELL	Prepared and filed Notice of Appearance; updated file.	0.10
10/31/2018	APRIL	Prepared and efiled notice of appearance; updated client file	0.10
11/19/2018	BHOWELL	Received and reviewed email regarding BVA transmittal and reviewed for accuracy; updated file.	0.10
12/6/2018	BHOWELL	Received and reviewed OGC Notice of Appearance and updated client file	0.10
12/13/2018	BHOWELL	Received and reviewed RBA cert of service; updated file.	0.10
12/18/2018	BHOWELL	Drafted status letter to client	0.10
12/18/2018	NICK	Reviewed RBA to determine need for dispute	1.20
2/25/2019	BHOWELL	Received and reviewed Notice to file brief, calculated brief due date, and updated client file	0.10
2/27/2019	BHOWELL	Reviewed RBA 1-78	0.50
3/1/2019	BHOWELL	Reviewed RBA 79-1685	2.70
3/4/2019	BHOWELL	Reviewed RBA 1686-2525	2.40
3/4/2019	BHOWELL	Reviewed RBA 2526-3919, and drafted PBC Memo outline	2.30
3/13/2019	BHOWELL	Call to client re: status of claims	0.10
3/13/2019	BHOWELL	Received and reviewed PBC Order, calculated memo due date, and updated client file	0.10
3/21/2019	APRIL	Reviewed BVA decision and case map; reviewed outline of arguments for PBC memo for accuracy and completeness; suggested adjustments and additions	0.80
3/21/2019	BHOWELL	Began drafting PBC Memo	1.40
3/22/2019	BHOWELL	Continued drafting PBC Memo	1.40
3/22/2019	BHOWELL	Continued drafting PBC Memo	3.00
3/25/2019	APRIL	Reviewed draft of PBC memo for legal and factual accuracy; suggested revisions and edits for accuracy and completeness	1.20
3/25/2019	APRIL	Reviewed revised draft of PBC memo for implementation of edits; suggested edits for clarity	0.80
3/25/2019	BHOWELL	Made final revisions to PBC Memo, compiled and redacted RBA, emailed memo and RBA to OGC and CLS, filed cert of serv and drafted cover letter to client	1.20
3/25/2019	BHOWELL	Reviewed suggestions and comments and made revisions to PBC Memo	1.70
4/8/2019	BHOWELL	Reviewed PBC Memo and RBA in preparation of PBC, participated in conference, and updated client file with notes post conference	0.60
4/8/2019	BHOWELL	Received and reviewed CLS's request to move PBC and responded to her email	0.10
4/9/2019	BHOWELL	Call to client regarding the conference and addressed all of the client's questions and concerns	0.10
6/14/2019	BHOWELL	Began drafting statement of the case and argument section of opening brief	3.00
6/17/2019	BHOWELL	Continued drafting brief - argument section	2.50
6/17/2019	BHOWELL	Continued drafting opening brief - statement of the case	1.90

## Exhibit A

Time from 10/1/2018 to 4/21/2021

Case No. 263569

Client: Garner, Mr. Ronald V.

			<u>Hours</u>
6/18/2019	APRIL	Researched memorandum decisions regarding sleep apnea secondary to psych; reviewed statment of issues, statement of case, and summary of argument of draft opening brief	2.20
6/18/2019	BHOWELL	Continued drafting opening brief - argument section	1.40
6/19/2019	APRIL	Completed review of draft opening brief	1.20
6/19/2019	BHOWELL	Continued revising draft opening brief	0.50
6/19/2019	BHOWELL	Began reviewing suggestions and comments and revising opening brief	0.40
6/19/2019	BHOWELL	Continued revising draft opening brief	2.60
6/20/2019	APRIL	Began review of revised draft of opening brief; discussed revisions with Brittani	2.00
6/20/2019	APRIL	Completed review of revised draft of opening brief	1.20
6/20/2019	BHOWELL	Continued revising opening brief	1.10
6/21/2019	BHOWELL	Continued revising opening brief	0.70
6/21/2019	BHOWELL	Continued revising draft opening brief	3.00
6/23/2019	BHOWELL	Continued revising draft opening brief	0.60
6/24/2019	BHOWELL	Made final revisions to opening brief, checked case and record citations, and e-filed	1.40
6/24/2019	BHOWELL	Reviewed comments and suggestions and made additional revisions to draft opening brief	1.20
10/15/2019	BHOWELL	Continued drafting reply brief	1.70
10/15/2019	BHOWELL	Reviewed opening brief, OGC's brief, lit strat notes, and began researching and drafting reply brief	3.00
10/16/2019	APRIL	Reviewed draft reply brief; suggested revisions and additions for accuracy and completeness	2.10
10/17/2019	BHOWELL	Reviewed comments and suggested revisions, began revising reply brief	2.00
10/18/2019	BHOWELL	Continued revising draft reply brief	2.30
10/20/2019	APRIL	Reviewed revised draft of reply brief for implementation of revisions; suggested edits for accuracy and clarity	2.40
10/21/2019	BHOWELL	Made final revisions to reply brief, checked citations to record and authority, and e-filed	1.10
10/21/2019	BHOWELL	Reviewed comments and suggestions and made additional revisions to draft reply brief	1.10
11/5/2019	BHOWELL	Received and reviewed record of proceedings, prepared and filed letter to clerk noting no dispute	0.40
11/8/2019	BHOWELL	Received and reviewed Judge assignment and updated client file	0.10
1/28/2020	BHOWELL	Received and reviewed order that case is submitted to panel, reviewed briefs and drafted a note to the file regarding issue likely to be discussed	0.30
2/4/2020	BHOWELL	Began drafting motion for oral argument	1.50
2/6/2020	BARBARA	Review and edit draft motion for oral argument	0.30
2/6/2020	BHOWELL	Continued drafting motion for oral argument	0.60
2/6/2020	BHOWELL	Reviewed revisions and suggestions on motion for oral argument	0.20
2/7/2020	BHOWELL	Call to client, no answer, could not leave message. Note to the file.	0.10
2/10/2020	BHOWELL	Received and reviewed order from Court to schedule oral argument and updated client file	0.10
2/11/2020	BHOWELL	Call to client, no answer, could not leave message. Note to the file.	0.10
2/14/2020	BHOWELL	Call to client, no answer, left message. Note to the file.	0.10
2/20/2020	BHOWELL	Call to client, no answer, left message. Drafted request to contact letter.	0.10

## Exhibit A

Time from 10/1/2018 to 4/21/2021

Case No. 263569

Client: Garner, Mr. Ronald V.

				<u>Hours</u>
2/28/2020	BHOWELL	Drafted motion for clarification and updated client file		0.30
3/1/2020	BARBARA	Reviewed and edited motion for clarification		0.10
3/2/2020	BHOWELL	Email to OGC regarding motion for clarification		0.10
3/3/2020	BHOWELL	Received and reviewed order from court scheduling oral argument and updated client file		0.10
3/4/2020	BHOWELL	Call to client and alternate contact, no answer, could not leave messages. Emailed client request to contact		0.10
3/4/2020	BHOWELL	Finalized motion for clarification and e-filed		0.30
3/9/2020	BHOWELL	Received call from client, provided status updated, and updated client file		0.10
3/13/2020	BHOWELL	Received and reviewed order granting motion for clarification and updated client file		0.10
3/25/2020	BHOWELL	Received and reviewed order fro court making oral argument a teleconference oral argument		0.10
4/24/2020	APRIL	Reviewed record of proceedings and annotated for oral argument purposes; reviewed and annotated decision in Walsh v. Wilkie		2.70
4/27/2020	APRIL	Reviewed and analyzed memorandum decisions dealing with standard for reasonably raised, in general and in obesity context in preparation for oral argument		1.90
4/29/2020	APRIL	Reviewed and annotated pleadings to prepare for oral argument walkthrough; supplemented annotations to record of proceedings; held oral argument walkthrough		2.30
4/29/2020	BHOWELL	Reviewed pleadings and took notes to prepare for walk through		0.40
4/30/2020	APRIL	Reviewed VA website for material concerning relationship between physical activity and obesity; reviewed case law concerning well-grounded claims, reasonably raised theories, and sympathetic construction		2.90
5/3/2020	APRIL	Reviewed and annotated Delisio v. Shinseki and citing references applying "reasonably apparent" standard		1.40
5/6/2020	APRIL	Reviewed case law and regulatory history concerning proper analysis of aggravation under 3.310		1.40
5/7/2020	APRIL	Closely read and took notes on standards discussions in McLendon and Shade		0.90
5/7/2020	APRIL	Assembled oral argument binder		0.60
5/7/2020	APRIL	Compiled notes into outline for moot oral argument		1.60
5/7/2020	BHOWELL	Continued reviewing pleadings, case law, and completing outline of VA arguments to prepare for moot		1.90
5/8/2020	APRIL	Indexed record of proceedings for key facts; reviewed and annotated pleadings based on research in preparation for moot		2.30
5/8/2020	APRIL	Drafted opening statement; held moot oral argument and following discussion		2.10
5/8/2020	BHOWELL	Reviewed argument outline and pleadings to prepare for moot and participated in moot		1.60
5/8/2020	ZACH	Prepared for and participated in first full moot court. Preparation included review of all pleadings and legal research. Contribution to moot was as "judge."		3.00
5/13/2020	APRIL	Received email from Court with VA counsel's citation to supplemental authority; reviewed document and saved to client's file		0.10
5/13/2020	ZACH	Email exchange with Dawn Braquet concerning oral argument.		0.20
5/17/2020	APRIL	Reviewed and additionally annotated record of proceedings; reviewed reported and unreported cases citing to McLendon/Jandreau/Waters re lay competency and etiology		2.00
5/18/2020	APRIL	Attended pre-argument orientation by phone; noted instructions in client's file; reviewed aggravation and baseline severity determination		1.60
5/18/2020	APRIL	Researched case law and regulatory history regarding calculation of baseline level of disability and non-successive rating criteria; began redrafting opening statement		2.80

## Exhibit A

Time from 10/1/2018 to 4/21/2021

Case No. 263569

Client: Garner, Mr. Ronald V.

				<u>Hours</u>
5/19/2020	APRIL	Prepared alternate opening statements		0.20
5/19/2020	APRIL	Prepared for and held second moot and follow-up discussion		3.40
5/19/2020	BHOWELL	Reviewed outline and pleadings to prepare for moot, and participated as VA in moot		2.10
5/19/2020	ZACH	Prepared for and participate in full moot court. Preparation included review of caselaw and pleadings. Participation was as "judge" asking questions and developing oral argument strategy.		3.00
5/20/2020	APRIL	Reviewed file for Veteran's military and post-military occupational history		0.20
5/20/2020	APRIL	Reviewed cases concerning court's duty to conduct reasonably raised analysis and inability to weigh evidence; added to annotations in record of proceedings; discussed aggravation/prejudice argument with Barb and Zach; discussed aggravation/prejudice argument with Amy		3.00
5/20/2020	APRIL	Compiled final list of main points to address and revised opening statement		1.70
5/20/2020	ZACH	Further discussed oral argument and, in particular, aggravation part of case.		1.30
5/21/2020	AODOM	Prepared for and participated in telephonic oral argument as second chair; participated in post-argument debriefing.		3.00
5/21/2020	APRIL	Made final preparations for and participated in oral argument		3.30
5/21/2020	BHOWELL	Discussed where to access the oral argument recording with client; note to the file.		0.10
5/21/2020	BHOWELL	Call to client, no answer, left message. Note to the file.		0.10
8/21/2020	BHOWELL	Call to client, no answer, left message. Note to the file.		0.10
9/4/2020	BHOWELL	Call to client, no answer, left message. Note to the file.		0.10
9/4/2020	BHOWELL	Received call from client, provided status update, and updated client file		0.10
12/9/2020	BHOWELL	Call to client with status update and updated client file		0.10
1/26/2021	APRIL	Received email from Court with precedential decision; reviewed decision against arguments in briefs; summarized decision in client's file		0.50
1/29/2021	BHOWELL	Call to client, no answer, could not leave message. Note to the file.		0.10
2/1/2021	ZACH	Reviewed Court's precedential 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.		0.90
2/2/2021	BHOWELL	Call to client, no answer, left message. Note to the file.		0.10
2/4/2021	BHOWELL	Call to client, no answer, left message. Note to the file.		0.10
2/5/2021	BHOWELL	Call to client, no answer, left message. Note to the file.		0.10
2/10/2021	BHOWELL	Call to client, no answer, left message. Note to the file.		0.10
2/17/2021	BHOWELL	Call to client and discussed case		0.20
2/18/2021	BHOWELL	Received and reviewed judgment from Court and updated client file		0.10
2/18/2021	ZACH	Prepared letter to client concerning entry of Court's judgment.		0.30
4/20/2021	BHOWELL	Received and reviewed mandate, checked for accuracy, and updated client file		0.10
4/21/2021	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
4/21/2021	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.		1.20
4/21/2021	ZACH	Reviewed EAJA Application for proofreading purposes and to ensure billing accuracy.		0.30

**Timekeeper Summary**

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
<b>AODOM</b>	<b>3.0</b>	<b>\$ 204.21</b>	<b>\$ 612.63</b>
<b>APRIL</b>	<b>52.9</b>	<b>\$ 207.41</b>	<b>\$ 10,971.99</b>
<b>BARBARA</b>	<b>0.4</b>	<b>\$ 200.34</b>	<b>\$ 80.14</b>
<b>BHOWELL</b>	<b>23.5</b>	<b>\$ 207.41</b>	<b>\$ 4,874.13</b>
<b>DANIELLE</b>	<b>1.4</b>	<b>\$ 207.41</b>	<b>\$ 290.37</b>
<b>JCOAD</b>	<b>0.6</b>	<b>\$ 207.41</b>	<b>\$ 124.45</b>
<b>NICK</b>	<b>1.4</b>	<b>\$ 207.41</b>	<b>\$ 290.37</b>
<b>ZACH</b>	<b>9.0</b>	<b>\$ 207.41</b>	<b>\$ 1,866.69</b>
<b>BHOWELL</b>	<b>38.5</b>	<b>\$173.00</b>	<b>\$6,660.50</b>

Total: \$25,771.27

**USAO ATTORNEY'S FEES MATRIX — 2015-2021***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	2020-21
31+ years	568	581	602	613	637	665
21-30 years	530	543	563	572	595	621
16-20 years	504	516	536	544	566	591
11-15 years	455	465	483	491	510	532
8-10 years	386	395	410	417	433	452
6-7 years	332	339	352	358	372	388
4-5 years	325	332	346	351	365	380
2-3 years	315	322	334	340	353	369
Less than 2 years	284	291	302	307	319	333
Paralegals & Law Clerks	154	157	164	166	173	180

*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 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 the development of "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'").