

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

STEVEN V. CROWELL	)	
Appellant,	)	
	)	
v.	)	CAVC No. 16-3151
	)	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 **\$21,527.25**.

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).

After oral argument, the Court vacated and remanded the Board's May 27, 2016 decision based upon the Board's failure to provide an adequate statement of reasons or bases. See pages 1-3 of the Memorandum Decision. It has been sixty days since Entry of Judgment issued on March 16, 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. Crowell 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. Crowell 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 and in 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. There thus is nothing substantially justified in the Board's failure to provide an adequate statement of reasons or bases. 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*).

Seven attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Jenna Zellmer, Danielle M. Gorini, Stephen Capracotta, Matthew Pimentel, Christian McTarnaghan, Barbara Cook, and Zachary Stolz.<sup>1</sup>

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<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 Baldrige v. Nicholson*, 19 Vet.App. 227, 237-38 (2005) ("the fees sought must be 'based on the distinct contribution of each individual

Attorney Jenna Zellmer graduated from Boston University Law School in 2013 and the *Laffey* Matrix establishes that \$452.00 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. Stephen Capracotta

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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).

graduated from University of Connecticut School of Law in 2016 and the *Laffey* Matrix establishes that \$380.00 is the prevailing market rate for an attorney with his experience. Matthew Pimentel graduated from Roger Williams University Law School in 2013 and the *Laffey* Matrix establishes that \$452.00 is the prevailing market rate for an attorney with is experience. Christian McTarnaghan graduated from Suffolk University Law School in 2014 and the *Laffey* Matrix establishes that \$388.00 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 \$665.00 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.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$199.16 per hour for Ms. Zellmer, Ms. Gorini, Mr. Capracotta, Mr. Pimentel, Mr. McTarnaghan, and Mr. Stolz for representation services before the Court.<sup>3</sup> This rate per hour, multiplied

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<sup>3</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 was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to May 2017 the chosen mid-point date for the litigation in this case, using

by the number of hours billed for these six attorneys (105.20) results in a total attorney's fee amount of \$20,951.65.

Appellant seeks attorney's fees at the rate of \$192.91 per hour for Ms. Cook's representation services before the Court.<sup>4</sup> This rate per hour, multiplied by the number of hours billed for Ms. Cook (0.50) results in a total attorney's fee amount of \$96.45.

In addition, Appellant seeks reimbursement for the following expenses:

Airfare to and from DC for JZ: \$101.96

Hotel in DC for JZ: \$148.66

Travel to /from airport for JZ: \$42.77

Airfare to and from DC for SC: \$101.96

Parking at the airport for JZ: \$52.00

Taxi travel in DC for SC: \$16.80

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the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994). In this case, the Exhibit A is separated into two separate documents as a new time keeping program was used starting October 1, 2018.

<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 Cincinnati for the first half of 2017. 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 May 2017 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).



Parking at the airport for SC: \$15.00

Based upon the foregoing, the total fee sought is **\$21,527.25.**

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,  
Steven V. Crowell  
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

## Exhibit A

		<u>Hours</u>
6/3/2016 JZ	Reviewed BVA decision. Researched law. Gave opinion and recommendation for an appeal to Court.	0.30
9/13/2016 DMG	Reviewed file and appeal documents. Filed Notice of Appeal, Notice of Appearance for Zachary Stolz as lead counsel, Fee Agreement, and Declaration of Financial Hardship with the Court. Received, reviewed, and saved Court confirmation email to the file. Updated case checklist.	0.20
9/14/2016 DMG	Reviewed emails from Court with docketed appeal documents. Posted emails to the file. Checked Court docket sheet to ensure Notice of Appeal, Notice of Appearance for Zachary Stolz as lead counsel, Fee Agreement, and Declaration of Financial Hardship were properly docketed. Updated case information and case checklist.	0.20
11/10/2016 SMC	Prepared and e-filed notice of appearance, reviewed BVA decision, reviewed VA notice of appearance, reviewed RBA cert of service, updated case file.	0.30
11/14/2016 SMC	Received and reviewed notice that RBA was added to file, calculated motion to dispute RBA deadline, updated calendar and file.	0.10
1/12/2017 SMC	Reviewed entire RBA to determine need for dispute.	0.90
1/13/2017 SMC	Prepared status letter to client.	0.10

## Exhibit A

		<u>Hours</u>
1/19/2017 SMC	Receive and review of email from Court with Notice to File Brief. Ensured document was correct, calculated due date for brief. Updated client file and client calendar.	0.10
1/25/2017 SMC	Receive and review of email from the Court with PBC order. Ensured document was correct. Calculated due date for PBC memo and new due date for brief. Checked for conflict with the PBC date. Updated client file and calendar.	0.20
2/2/2017 SMC	Receive and review of email from the Court with VA Notice of Appearance. Updated client file.	0.10
2/10/2017 SMC	Receive and review of emails from CLS and VA counsel re: change in CLS conducting PBC. Drafted and sent reply email. Updated client file and calendar.	0.10
2/14/2017 SMC	Researched Johnston. Reviewed and casemapped pages 1 - 684 of the RBA.	2.00
2/15/2017 SMC	Prepared PBC memo for submission. Drafted and sent email with attached memo to VA counsel and CLS. Prepared and e-filed Rule 33 Certificate of Service. Updated client file.	0.10
2/15/2017 MP	Review PBC memo for Steve. Suggest edits to the same.	0.30
2/15/2017 SMC	Reviewed and incorporated edits to PBC memo, proofread and made further edits.	0.40
2/15/2017 SMC	Reviewed and casemapped pages 685 - 836 of the RBA. Drafted PBC memo.	1.50
3/1/2017 SMC	Attended PBC, took notes on Secretary's position and CLS comments.	0.20

## Exhibit A

		<u>Hours</u>
3/1/2017 SMC	Reviewed PBC memo and BVA decision in preparation for PBC. Made notes for reference during conference.	0.40
3/1/2017 SMC	Reviewed notes from PBC and relevant parts of RBA. Wrote note to file summarizing PBC outcome, VA's position and relevant aspects of case. Updated client file.	0.60
3/6/2017 SMC	Called client to discuss PBC, no answer, left voicemail message. Note to the file	0.10
3/13/2017 SMC	Called client to discuss PBC, no answer on cell or home numbers, left voicemail messages on both. Updated client file.	0.10
3/16/2017 SMC	Performed internet search for information on client. Drafted and sent email to client re: call to discuss case. Updated file.	0.30
3/17/2017 SMC	Client returned call - discussed PBC, explained briefing process and timeline. Drafted note to file summarizing call.	0.20
5/13/2017 SMC	Drafted 1.75 pages of statement of the case.	2.20
5/13/2017 SMC	Drafted final 0.5 pages of statement of the case, edited SOC. Researched case law on extraschedular issues, drafted standard of review, argument, and issue presented.	3.00
5/14/2017 SMC	Drafted summary of the argument and conclusion in opening brief. Reviewed and edited argument.	0.70
5/15/2017 JZ	Reviewed revised draft of brief and suggested final edits	0.30

## Exhibit A

		<u>Hours</u>
5/15/2017 JZ	Reviewed BVA dec and case file notes. Reviewed and edited Steve's brief, suggested additional case cites and reorganization.	0.60
5/15/2017 SMC	Reviewed opening brief, made final revisions. Checked citations to the record and authority. Finalized and prepared brief for e-filing, e-filed brief. Updated client file. Receive and review email from the Court confirming opening brief was filed.	1.40
5/15/2017 SMC	Researched additional case law, and regulations on extraschedular and lay testimony issues. Reviewed and incorporated suggested edits to opening brief, reorganized and added to argument I. Drafted argument II, issue II, and added to summary and conclusion accordingly.	2.80
5/16/2017 JZ	Drafted and filed notice of appearance.	0.10
7/14/2017 SMC	Receive and review email from the Court with Appellee's brief. Skimmed brief for overview of Appellee's arguments. Calculated due date for reply brief. Updated client file and calendar.	0.20
9/7/2017 SMC	Reviewed Appellee's brief, made notes and highlighted key points of argument. Re-reviewed opening brief, notes in case file, and relevant parts of the RBA. Drafted outline of reply brief.	2.00
9/7/2017 SMC	Reviewed reply brief outline and relevant parts of opening brief, Appellee's brief, and RBA. Drafted first 5 pages of reply brief.	2.60
9/8/2017 JZ	Reviewed reply draft. Made edits and suggestions to reply.	0.40

## Exhibit A

		<u>Hours</u>
9/8/2017 SMC	Drafted 5 pages of reply brief.	1.50
9/8/2017 SMC	Drafted final 4.5 pages of reply brief.	1.50
9/11/2017 SMC	Checked citations to the record and authority in reply brief. Finalized and prepared reply for e-filing, e-filed. Updated client file.	0.50
9/11/2017 SMC	Reviewed and incorporated edits and suggestions to reply brief. Reviewed reply brief and made final revisions.	2.00
9/18/2017 SMC	Receive and review email from the Court confirming response to Record of Proceedings was filed. Updated client file.	0.10
9/18/2017 SMC	Receive and review email from the Court with Record of Proceedings. Reviewed Record of Proceedings and compared to record citations in Appellant's Opening Brief and Reply Brief. Prepared and e-filed letter to the Court accepting ROP. Updated client file.	0.30
9/20/2017 SMC	Receive and review notice from the Court that Judge Toth was assigned to case. Updated client file.	0.10
10/10/2017 SMC	Receive and review email from the Court with Order submitting the case to a panel for decision. Reviewed relevant parts of opening and reply briefs to draft short summary of potential reasons for panel decision. Drafted summary.	0.30
10/18/2017 JZ	Reviewed and suggested edits to Steve's motion for oral argument	0.20

## Exhibit A

		<u>Hours</u>
10/18/2017 SMC	Prepared for meeting to discuss motion for oral argument by re-reviewing opening and reply briefs, Appellee's brief, and parts of BVA decision.	0.50
10/18/2017 SMC	Meeting regarding whether to move for oral argument, merits of case, potential issues for oral argument, and content of motion for oral argument. Took notes based on discussions.	0.70
10/18/2017 SMC	Drafted memo to file summarizing discussion during meeting on motion for oral argument. Emailed VA counsel re: position on motion for oral argument. Receive and review email from VA counsel re: position on motion. Drafted motion for oral argument.	1.00
10/24/2017 JZ	Reviewed revised draft of Steve's motion, made comments.	0.20
10/24/2017 SMC	Incorporated edits and suggestions to motion.	0.20
10/24/2017 SMC	Reviewed motion and made final revisions. Prepared motion for e-filing. E-filed motion.	0.30
10/24/2017 SMC	Reviewed motion for oral argument and clarification in King. Reviewed and incorporated edits and suggestions to motion for oral argument.	0.90
10/26/2017 SMC	Receive and review email from the Court with Appellee's motion in opposition to motion for oral argument. Note to the file.	0.20
10/27/2017 SMC	Receive and review for email from the Court with Order that the parties file supplemental memoranda of law. Reviewed Order. Updated	0.20

## Exhibit A

		<u>Hours</u>
	client file and calendar to reflect due date for Appellee's supplemental memorandum.	
11/20/2017 SMC	Receive and review email from VA counsel re: position on motion for extension of time to file supplemental memorandum. Replied to same.	0.10
11/20/2017 SMC	Receive and review email from the Court with Appellee's motion to extend time to file supplemental memorandum. Updated file.	0.10
11/21/2017 CM	Draft and file notice of appearance. Update file.	0.20
11/26/2017 SMC	Receive and review email from the Court with order granting Appellee's motion to extend time to file supplemental memorandum. Updated client file and calendar.	0.10
12/12/2017 SMC	Receive and review email from the Court with VA counsel's Notice of Appearance. Updated client file.	0.10
12/12/2017 SMC	Receive and review email from the Court with Appellee's supplemental memo. Skimmed memo for overview of Appellee's arguments. Updated client file and calendar.	0.30
12/15/2017 SMC	Reviewed Appellee's supplemental memorandum, made notes and highlighted key aspects of argument.	0.40
12/15/2017 SMC	Called client to explain his case was called to panel, explain next steps. Answered client's questions. Drafted memo to file summarizing call.	0.40



## Exhibit A

		<u>Hours</u>
12/20/2017 SMC	Reviewed note in client file re: discussion of supplemental memo. Researched relevant case law and regulations to draft supplemental memo. Drafted supplemental memo.	3.00
12/29/2017 CM	Review VA's supplemental memo. Take notes on points made. Review reponse for legal accuray. Suggest responding to each of the 5 authorities VA states BVA can reply upon. Edit for general legal accuracy. Update client file.	1.60
1/2/2018 SMC	Reviewed CMC's comments and edits to supplemental memorandum. Incorporated edits and suggestions	0.50
1/5/2018 SMC	Receive and review email from the Court with order scheduling oral argument. Ensured document was correct. Updated client file.	0.10
1/9/2018 SMC	Continued researching supplemental pleading in Morgan. Continued reviewing and incorporating edits and suggestions to supplemental memo.	0.20
1/9/2018 SMC	Made final edits to supplemental memorandum. Finalized and prepared memo for e-filing. E-filed memo. Receive and review email from the Court confirming memo was filed. Updated client file.	0.40
1/9/2018 ZMS	Reviewed pleadings and notes on case. Reviewed and revised response to Court order.	1.50
1/9/2018 SMC	Reviewed notes in client file re: supplemental memorandum. Reviewed and incorporated additional edits and suggestions to supplemental memo. Researched relevant cases, regulations, and supplemental pleadings. Reviewed supp. memo and made further edits.	3.00

## Exhibit A

		<u>Hours</u>
1/12/2018 JZ	Began case file review to familiarize myself with issues in preparation of oral argument	0.60
1/25/2018 SMC	Reviewed first 6 pages of supplemental memorandum in preparation for oral argument walkthrough.	0.40
1/25/2018 JZ	Researched case law and regs on E-S, skin diagnostic code, reg history, reviewed pleadings and record, in preparation for oral argument.	3.00
1/26/2018 SMC	Continued reviewing final 4 pages of supplemental memorandum and parts of Appellee's supplemental memorandum in preparation for oral argument walkthrough.	0.50
1/26/2018 SMC	Participated in oral argument walkthrough: discussed briefs and supplemental memorandums, issues in case, and plan for oral argument.	0.90
1/26/2018 JZ	Continued oral argument preparation, outlined opening statement. Participated in oral argument walkthrough to discuss issues court is most interested in and prepare of responses to questions.	1.90
1/26/2018 ZMS	Conducted legal research concerning extraschedular evaluations and proper Court remedies for BVA actions. Participated in litigation strategy session and oral argument prep	3.00
1/29/2018 JZ	Drafted notice to clarify issues	0.60
1/30/2018 BJC	Review notice to clarify	0.10
1/30/2018 JZ	Reviewed, edited, and finalized notice clarifying argument. Filed notice	0.40

## Exhibit A

		<u>Hours</u>
2/1/2018 JZ	Continued drafting opening statement, brainstorming potential questions. Began listening to King oral argument.	1.40
2/1/2018 JZ	Oral argument prep: reviewed record to draft oral argument notes on R-cites. Listened to recent, relevant oral arguments, added to oral argument outline - including opening statement and answers to potential questions.	2.60
2/2/2018 SMC	Prepared for oral argument moot by reviewing pleadings, taking notes, and preparing questions.	0.40
2/2/2018 SMC	Participated in oral argument moot and discussed issues for oral argument.	0.90
2/2/2018 ZMS	Conducted legal research. Prepared for and participated in first moot court.	2.50
2/2/2018 JZ	Prepared for formal moot - finalized opening statement, continued brainstorming answers, organized oral argument binder. Participated in moot	2.80
2/7/2018 SMC	Reviewed notes in client file re: last contact, oral argument and notice to clarify. Called client to discuss oral argument and notice to clarify. Drafted memo to file summarizing call.	0.30
2/8/2018 SMC	Participated in second oral argument moot: asked Jenna questions, gave feedback and discussed issues in the case and in oral argument.	0.90
2/8/2018 JZ	Reviewed pleadings participated in second moot, took notes on additional cases to review and Record citations to note.	2.70

## Exhibit A

			<u>Hours</u>
2/8/2018	ZMS	Prepared for and participated in second moot. Preparation included legal research concerning relevant diagnostic codes, the recent rule clarification for extraschedular evaluations, and recent caselaw.	2.80
2/12/2018	JZ	Final preparations for oral argument - updated outlines/opening statement and binder.	1.00
2/12/2018	JZ	Reviewed relevant case law and oral argument outline	1.50
2/12/2018	JZ	Traveled to DC for oral argument - travel to airport, flight time, and travel from airport to hotel.	3.00
2/13/2018	SMC	Traveled from Reagan National Airport to U.S. Court of Appeals for Veterans Claims via Uber driver.	0.50
2/13/2018	JZ	Morning oral argument prep - reviewed oral argument binder with pleadings and record citations, practiced opening statement, and answers to questions.	2.00
2/13/2018	JZ	Traveled from hotel to Court, participated in pre-oral argument meeting with Greg Block, participated in oral argument.	2.00
2/13/2018	JZ	Traveled from court to airport, flew back to Providence, and traveled from airport to home.	3.00
2/13/2018	SMC	Traveled to TF Green Airport for oral argument. Parked car and took shuttle to airport terminal. Flew to Washington, DC for oral argument.	3.00

# Exhibit A

		<u>Hours</u>	
2/13/2018	SMC	Traveled from Court to Regan National Airport via Uber. Flew back to TF Green Airport and took shuttle to car.	3.00
4/27/2018	SMC	Called client to check in and discuss oral argument. No answer, left a voicemail message. Drafted memo to file noting same.	0.10
4/27/2018	SMC	Client returned call: discussed oral argument and status of case. Drafted memo to file summarizing call. Emailed client with link to audio recording of oral argument.	0.40
8/1/2018	JZ	Spoke to client re: status, explained waiting for decision. Note to file on conversation.	0.20

	<u>Amount</u>
96.20	\$19,158.58

## Expenses

Airfare for oral argument - JZ	101.96
Airfare to /from DC - SC	101.96
Hotel in DC - JZ	148.66
Parking at airport - JZ	52.00
Parking at airport - SC	15.00
Taxi in RI to /fr airport - JZ	42.77
Travel in DC - SC	16.80
Total Expenses	<u>\$479.15</u>

## Exhibit A

	<u>Amount</u>
96.20	\$19,637.73

### Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Barbara J. Cook	0.10	192.91	\$19.29
Christian McTarnaghan	1.80	199.16	\$358.49
Danielle M. Gorini	0.40	199.16	\$79.66
Jenna Zellmer	30.80	199.16	\$6,134.13
Matthew Pimentel	0.30	199.16	\$59.75
Stephen Capracotta	53.00	199.16	\$10,555.49
Zachary M. Stolz	9.80	199.16	\$1,951.77

# Exhibit A

Time from 10/1/2018 to 5/17/2021

**Case No. 234469**

**Client: Crowell, Mr. Steven V.**

			<b><u>Hours</u></b>
11/5/2018	JENNA	Discussed status with client. Note to file on conversation.	0.20
2/27/2019	JENNA	Called client to discuss still waiting for mem dec, note to file on conversation.	0.20
6/12/2019	JENNA	Spoke to client re: status, note to file on conversation.	0.20
6/21/2019	JENNA	Drafted rule 30(b) letter	0.40
6/21/2019	JENNA	Reviewed case in light of Morgan decision and Long pleading. Memo to the file re: strategy	0.30
6/21/2019	ZACH	Reviewed notes on case and discussed with Jenna Zellmer. Reviewed 30(b) letter to be filed.	0.60
6/24/2019	JENNA	Reviewed, edited, finalized, and filed 30(b) letter.	0.20
10/8/2019	JENNA	Spoke to client re: waiting on decision, note to file on conversation.	0.30
12/18/2019	JENNA	Return client's call, left voice mail, note to the file.	0.10
12/18/2019	JENNA	Spoke to client re: status, note to file on conversation.	0.30
12/18/2019	JENNA	Listened to voice mail from client, note to file	0.10
4/13/2020	JENNA	Spoke to client re: status, note to file on conversation	0.20
7/1/2020	JENNA	Reviewed CAVC email re: new VA OGC appearance filed. Updated client file and calendar.	0.10
10/19/2020	JENNA	Called client to discuss case status, left voice mail, note to the file	0.10
10/19/2020	JENNA	Spoke to client re: status. Note to file on conversation.	0.20
1/15/2021	JENNA	Reviewed pleadings and researched law, took notes on post-Long strategy options	0.40
1/23/2021	JENNA	Reviewed pleadings and Long, drafted 30(b)	0.30
1/25/2021	BARBARA	Review and suggest edits to 30B after reviewing opening brief and finding additional symptoms	0.40
1/26/2021	JENNA	Reviewed Barb's suggested edits to 30(b), incorporated them, finalized and filed 30(b) letter	0.60
2/11/2021	JENNA	Reviewed CAVC email re: order dissolving panel, updated client file. Called client to discuss status and left voice mail. Note to the file.	0.20
2/22/2021	JENNA	Reviewed CAVC email re: mem dec issued, reviewed mem dec, compared to case file notes and pleadings, updated client file and calendar re: outcome	0.30
2/22/2021	ZACH	Reviewed favorable decision from Court that had previously been assigned to panel. Note to the file.	0.60
2/25/2021	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.	0.30
3/1/2021	JENNA	Spoke to client re: mem dec, note to file on conversation.	0.30
3/16/2021	JENNA	Reviewed CAVC email re: judgment entered, ensured accuracy of document, updated client file	0.10
3/26/2021	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
5/17/2021	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
5/17/2021	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.50
5/17/2021	ZACH	Reviewed EAJA Application for proofreading purposes and to ensure billing accuracy.	0.50

**Timekeeper Summary**

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
BARBARA	0.4	\$ 192.91	\$ 77.16
DANIELLE	1.7	\$ 199.16	\$ 338.57
JENNA	5.1	\$ 199.16	\$ 1,015.72
ZACH	2.3	\$ 199.16	\$ 458.07
	9.5		\$ 1,889.52



## 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'").