

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

JAMES R. HEALEY)	
Appellant,)	
)	
v.)	CAVC No. 18-6970
)	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 **\$22,509.93**.

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 October 15, 2018 decision based upon the Board's failure to provide an adequate statement of reasons or bases. See pages 1-16 of the Decision. Mandate issued on May 18, 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. Healey 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. Healey 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 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 Elcyszyn*, 7 Vet. App. at 176-177).

Eleven attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Stephen Capracotta, Danielle M. Gorini, Nicholas Phinney, Maura Clancy, Kaitlyn Degnan, Dale Ton, April Donahower, Bradley Hennings, Barbara Cook, Amy Odom, and Zachary Stolz.¹ Attorney Stephen Capracotta

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 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

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.² 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. Nicholas Phinney graduated from

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.

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).

Roger Williams University Law School in 2007 and the *Laffey* Matrix establishes that \$532.00 is the prevailing market rate for an attorney with his experience.

Maura Clancy graduated from Roger Williams University Law School in 2014 and the *Laffey* Matrix establishes that \$388.00 is the prevailing market rate for an attorney with her experience. Kaitlyn Degnan graduated from Syracuse

University Law School in 2017 and the *Laffey* Matrix establishes that \$380.00 is the prevailing market rate for an attorney with her experience. Dale Ton

graduated from American University Law School in 2018 and the *Laffey* Matrix establishes that \$369.00 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. Bradley Hennings graduated from Rutgers University Law School in 2006 and the *Laffey* Matrix establishes that \$532.00 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. 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.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$207.60 per hour for Mr. Capracotta, Ms. Gorini, Mr. Phinney, Ms. Clancy, Ms. Degnan, Mr. Ton, Ms. Donahower, Mr. Hennings, and Mr. Stolz for representation services before the Court.³ This rate per hour, multiplied by the number of hours billed for these nine attorneys (102.90) results in a total attorney's fee amount of \$21,362.04.

Appellant seeks attorney's fees at the rate of \$200.73 per hour for Ms. Cook's representation services before the Court.⁴ This rate per hour, multiplied by the number of hours billed for Ms. Cook (4.40) results in a total attorney's fee

³ 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 July 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).

⁴ 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, July 2019, divided by the data from the Midwest Consumer Price Index-U for December 2017 or 230.548.

amount of \$883.21.

Appellant seeks attorney's fees at the rate of \$203.60 hour for Ms. Odom's representation services before the Court.⁵ This rate per hour, multiplied by the number of hours billed for Ms. Odom (1.30) results in a total attorney's fee amount of \$264.68.

Based upon the foregoing, the total fee sought is **\$22,509.93**.

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 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 July 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).

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,
James R. Healey
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

Time from 10/1/2018 to 5/20/2021

Case No. 264640

Client: Healey, Mr. James R.

			<u>Hours</u>
11/13/2018	STEPHEN	Reviewed Board decision and conducted legal research. Recommended case for appeal to CAVC and suggested legal arguments.	0.60
12/12/2018	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
12/15/2018	NICK	Reviewed the docket and confirmed Court's docketing of appeal; updated client file	0.10
12/20/2018	MCLANCY	Prepared and e-filed notice of appearance. Reviewed docket for procedural status of appeal in Court. Updated client file.	0.20
1/15/2019	MCLANCY	Received notice from Court attaching BVA decision transmittal and copy. Reviewed for accuracy and saved to case file. Updated client file.	0.10
1/25/2019	MCLANCY	Received and reviewed notice from Court attaching OGC's notice of appearance. Updated client file.	0.10
2/11/2019	MCLANCY	Received notice from Court attaching RBA certificate of service. Reviewed for accuracy and saved to case file. Calculated deadline for motion to dispute RBA. Updated client file.	0.10
2/19/2019	NICK	Reviewed RBA to determine need for dispute	0.80
3/3/2019	MCLANCY	Prepared and sent letter to client regarding status of appeal in Court. Updated client file.	0.10
3/5/2019	MCLANCY	Received notice to file brief from Court. Reviewed for accuracy and saved to case file. Calculated deadline for opening brief. Updated client file.	0.10
3/18/2019	MCLANCY	Listened to voicemail from client and noted content of call for case file. Phone call with client to discuss status of appeal in Court. Documented phone call for case file.	0.30
3/22/2019	MCLANCY	Received PBC order from Court. Reviewed for accuracy and saved to case file. Calculated deadline for SOI and recalculated deadline for brief. Updated client file.	0.10
4/3/2019	MCLANCY	Continued to review RBA for briefing purposes. Prepared casemap for pages 1341-2330 (end). Updated client file.	1.70
4/3/2019	MCLANCY	Began to review RBA for briefing purposes. Prepared casemap for pages 1-1340 of RBA. Updated client file.	3.00
4/3/2019	MCLANCY	Began to draft PBC memo. Updated client file.	0.30
4/4/2019	MCLANCY	Continued to draft PBC memo. Completed draft of memo. Proofread and finalized memo, and submitted memo to OGC and CLS. Prepared and e-filed Rule 33 certificate of service. Prepared and sent letter to client enclosing copy of PBC memo. Updated client file.	1.80
4/18/2019	MCLANCY	Reviewed case file notes, BVA decision, and SOI in preparation for PBC. Participated in PBC with OGC and CLS. Prepared detailed note to case file regarding PBC outcome and VA's position. Calculated deadline for brief. Updated client file.	0.70
4/20/2019	MCLANCY	Phone call with client to discuss PBC outcome and briefing process in Court. Documented phone call for case file.	0.30
4/23/2019	MCLANCY	Attended litigation strategy meeting, discussed issues for inclusion in opening brief, determined review track for opening brief, and updated client file.	0.20
4/23/2019	MCLANCY	Reviewed case file notes, BVA decision, and SOI in preparation for litigation strategy meeting. Prepared detailed note to case file regarding issues to be argued in opening brief, in preparation for litigation strategy meeting. Updated client file.	0.60
4/23/2019	ZACH	Participated in meeting regarding case and briefing strategy.	0.10
5/20/2019	MCLANCY	Phone call with client to discuss status of appeal in Court. Documented phone call for case file. Prepared and sent letter to client regarding status of appeal in Court and timeline for briefing in Court. Updated client file.	0.30
7/2/2019	MCLANCY	Began to draft statement of the case for opening brief. Updated client file.	3.00
7/3/2019	MCLANCY	Continued to draft statement of the case for opening brief. Completed statement of the case and standard of review. Began to draft secondary SC argument. Updated client file.	3.00
7/3/2019	MCLANCY	Continued to draft arguments for opening brief, including direct and secondary SC arguments. Researched the law regarding whether the Board was on notice of the VAO update. Updated client file.	0.90

Exhibit A

Time from 10/1/2018 to 5/20/2021

Case No. 264640

Client: Healey, Mr. James R.

				<u>Hours</u>
7/5/2019	MCLANCY	Continued to draft opening brief. Drafted secondary SC arguments and submitted first draft of brief to AFO for review. Updated client file.		2.20
7/5/2019	MCLANCY	Continued to draft opening brief. Drafted issues presented, summary of the argument, and first argument regarding direct service connection. Updated client file.		2.70
7/8/2019	AODOM	Reviewed and edited initial brief; provided legal advice to M Clancy regarding same.		1.30
7/8/2019	MCLANCY	Implemented edits to improve accuracy, clarity, and legal support for arguments in brief. Checked accuracy of all citations to the law and the record. Finalized and e-filed brief. Calculated deadline for OGC's brief. Updated client file.		3.00
8/15/2019	MCLANCY	Phone call with client to discuss status of appeal in Court. Documented phone call for case file.		0.20
9/6/2019	MCLANCY	Exchanged emails with OGC regarding OGC's motion for extension of time to file brief. Updated client file.		0.10
9/6/2019	MCLANCY	Received notice from Court attaching OGC's motion for extension of time to file brief. Reviewed for accuracy, saved to case file, and updated client file.		0.10
9/6/2019	MCLANCY	Received notice from Court granting OGC's motion for extension of time to file brief. Reviewed for accuracy, saved to case file, calculated new deadline for OGC's brief, and updated client file.		0.10
10/8/2019	KDEGNAN	Prepared and efiled notice of appearance. Updated file.		0.10
10/9/2019	DTON	Prepared and filed appearance, updated client file.		0.10
10/21/2019	DTON	Received and reviewed email with Secretary's brief. Reviewed opening brief and case map of record for briefing purposes. Updated client file.		0.50
10/25/2019	DTON	Reviewed Secretary's brief and drafted memo to file regarding Secretary's response arguments. Updated client file.		2.60
10/29/2019	DTON	Spoke with client via telephone regarding case status, updated client file.		0.40
12/5/2019	DTON	Began drafting reply brief.		1.80
12/5/2019	DTON	Continued drafting reply brief.		0.60
12/6/2019	DTON	Continued drafting reply brief.		1.80
12/10/2019	DTON	Reviewed record; legal research; continued drafting reply brief.		3.00
12/11/2019	DTON	Continued drafting reply brief Euzebio argument.		3.00
12/11/2019	DTON	Began making edits to reply brief		0.30
12/11/2019	KDEGNAN	Reviewed pleadings and reviewed reply DTA argument 1 for legal and grammatical accuracy. Made suggestions to improve clarity and persuasiveness.		1.00
12/11/2019	KDEGNAN	Reviewed reply DTA argument 2 for legal and grammatical accuracy. Made suggestions to improve clarity and organization, identified areas where argument could be expanded.		0.60
12/12/2019	DTON	Continued incorporating edits to reply brief draft DTA argument.		0.20
12/13/2019	APRIL	Reviewed draft Euzebio/Update argument in reply brief; outlined argument addressing Purplebook for addition to draft; suggested revisions and edits for accuracy and clarity		2.50
12/16/2019	DTON	Continued reviewing and revising reply brief draft.		3.00
12/17/2019	APRIL	Reviewed revised draft of reply brief/NAS Update argument		3.00
12/18/2019	APRIL	Completed review of revised draft of NAS Update argument; discussed edits with Dale		1.20
12/19/2019	DTON	Made final edits to reply brief; e-filed reply brief, updated client file.		0.60
12/30/2019	DTON	Received and reviewed notice with ROP, updated client file.		0.10
12/31/2019	DTON	Reviewed ROP, prepared and e-filed ROP response. Updated client file.		0.40
1/6/2020	DTON	Received and reviewed notice of judge assignment, updated client file.		0.10

Exhibit A

Time from 10/1/2018 to 5/20/2021

Case No. 264640

Client: Healey, Mr. James R.

			<u>Hours</u>
1/17/2020	DTON	Spoke with client via telephone, updated client file.	0.20
4/8/2020	DTON	Emailed OGC to ascertain position on oral argument motions. Began drafting oral argument motions.	0.60
4/9/2020	DTON	Continued drafting oral argument motions.	1.90
4/10/2020	BARBARA	Review and edit motion for oral argument	0.20
4/10/2020	DTON	Spoke with client and explained motion for oral argument. Updated client file.	0.30
4/10/2020	DTON	Reviewed, finalized, and e-filed oral argument motion. Updated client file.	0.30
4/22/2020	DTON	Received and reviewed notice of Court oral argument order. Received and reviewed OGC email regarding position on motion to stay pending Euzebio. Responded to OGC email. Updated client file.	0.40
5/5/2020	DTON	Received and reviewed notice of scheduled oral argument. Updated client file.	0.10
6/10/2020	DTON	Spoke with client via telephone, discussed details of scheduled oral argument. Updated client file.	0.30
7/6/2020	BRADLEY	Review of all the pleadings in preparation for oral argument. Legal research into 38 CFR 20.1303 and the Malinowski case.	1.30
7/6/2020	BRADLEY	Legal reserach involving qualifications of VLJs, a single judge decision supporting our position, Model Rules of Professional Conduct, a prior BVA remand by same Board member, overton v. wilkie and the implementing CHairman's memo of the Purplebook.	1.70
7/8/2020	BARBARA	Review pleadings to prep for walk through of oral argument	0.10
7/9/2020	BARBARA	Review pleadings in preparation of discussing issues in prepartion of oral arguement	0.80
7/9/2020	BRADLEY	Prepared and filed notice of appearance. Updated file.	0.10
7/9/2020	BRADLEY	Walkthrough in preparation for 1st chairing oral argument.	0.70
7/9/2020	KDEGNAN	Reviewed case pleadings to prepare for oral argument walkthrough.	0.90
7/9/2020	KDEGNAN	Participated in walkthrough for oral argument	0.70
7/9/2020	ZACH	Reviewed pleadings, record, and notes on case in preparation for oral argument "walk through" and discussion. Participated in discussion.	3.00
7/14/2020	KDEGNAN	Began preparing supplemental authority to submit to Court ahead of argument.	0.80
7/15/2020	KDEGNAN	Continued preparing 30(b) submissions	0.60
7/16/2020	BARBARA	Review and edit supplemental authorities	0.20
7/16/2020	BARBARA	Review pleadings and start to review Euzebio to prep for moot in preparation for oral argument	0.50
7/16/2020	BARBARA	Prepare for and participate in moot of oral argument	1.30
7/16/2020	BRADLEY	First moot in preparation for first chairing oral argument.	1.00
7/16/2020	BRADLEY	Prepared outline to guide oral argument preparation.	2.00
7/16/2020	KDEGNAN	Participated in moot of oral argument.	0.80
7/16/2020	KDEGNAN	Reviewed pleadings and conducted legal research into direct relationship test. Reviewed recent mem decs discussing the Court's decision in Euzebio. Prepared materials to argue Secretary's position at first moot.	3.00
7/16/2020	KDEGNAN	Finished drafting supplemental authorities. Prepared exhibits.	1.00
7/16/2020	KDEGNAN	Finalized supplemental authorities and efiled.	0.40
7/16/2020	ZACH	Participated in moot court as "judge" and in preparation for duties as "second chair."	1.50
7/16/2020	ZACH	Continued preparation both for moot court and for responsibilities as "second chair" in upcoming oral argument. Preparation included review of cited cases and record	3.00

Exhibit A

Time from 10/1/2018 to 5/20/2021

Case No. 264640

Client: Healey, Mr. James R.

			<u>Hours</u>
7/19/2020	BRADLEY	Reviewed all Euzebio Federal Circuit pleadings and revised oral argument outline.	1.80
7/20/2020	BRADLEY	Participated in prep call conducted by Court staff.	0.20
7/20/2020	BRADLEY	Received feedback on second outline and revised into third draft of oral argument outline.	0.80
7/20/2020	ZACH	Participated in prep call conducted by Court staff.	0.20
7/21/2020	BARBARA	Prepare for and participate in additional moot	1.30
7/21/2020	BRADLEY	Prepared for and participated in second moot.	1.80
7/21/2020	ZACH	Prepared for and participated in second full moot court as judge.	1.30
7/21/2020	ZACH	Continued preparation for second chair duties including research of cases surrounding issues of constructive notice.	2.50
7/22/2020	KDEGNAN	Left voicemail for client. Note to the file.	0.10
7/23/2020	BRADLEY	Final preparation for oral argument.	1.20
7/23/2020	BRADLEY	Oral argument with CAVC as first chair.	1.50
7/23/2020	KDEGNAN	Discussed oral argument with client.	0.20
7/23/2020	ZACH	Participated as second chair in oral argument and clerk's prep discussion.	1.50
7/23/2020	ZACH	Completed final legal research in preparation for oral argument. Note to the file concerning last minute strategy.	2.20
7/30/2020	KDEGNAN	Discussed oral argument with client.	0.20
11/3/2020	KDEGNAN	Discussed status of case with client. Wrote memo to file.	0.20
1/14/2021	KDEGNAN	Discussed status of case with client. Wrote memo to file.	0.20
1/26/2021	KDEGNAN	Received court entry of argument onto the docket. Reviewed to ensure accurate and updated client file accordingly.	0.10
2/24/2021	ZACH	Reviewed precedent decision and drafted note to the file.	0.60
2/26/2021	KDEGNAN	Received precedential decision from court. Reviewed against arguments in briefs. Prepared summary of decision and its holdings. Memo to file.	1.10
3/2/2021	ZACH	Prepared letter to client concerning Court's precedent decision.	0.30
3/10/2021	KDEGNAN	Call client. No answer. Conducted research on his current status. Note to the file.	0.40
3/10/2021	KDEGNAN	Prepared letter to client's wife.	0.20
3/18/2021	KDEGNAN	Received judgment from court. Reviewed to ensure docketed accurately and updated client file. Calculated due dates and updated client file accordingly.	0.10
3/30/2021	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
4/6/2021	KDEGNAN	Discussed CAVC decision with client. Memo to file.	0.20
5/18/2021	KDEGNAN	Received notice of mandate from court. Reviewed to ensure docketed accurately, calculated due dates and updated client file accordingly.	0.10
5/19/2021	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
5/19/2021	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	2.00
5/19/2021	ZACH	Reviewed EAJA Application for proofreading purposes and to ensure billing accuracy	0.90

Timekeeper Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
AODOM	1.3	\$ 203.60	\$ 264.68
APRIL	6.7	\$ 207.60	\$ 1,390.92
BARBARA	4.4	\$ 200.73	\$ 883.21
BRADLEY	14.1	\$ 207.60	\$ 2,927.16
DANIELLE	2.2	\$ 207.60	\$ 456.72
DTON	22.6	\$ 207.60	\$ 4,691.76
KDEGNAN	13.0	\$ 207.60	\$ 2,698.80
MCLANCY	25.3	\$ 207.60	\$ 5,252.28
NICK	1.0	\$ 207.60	\$ 207.60
STEPHEN	0.6	\$ 207.60	\$ 124.56
ZACH	17.4	\$ 207.60	\$ 3,612.24
	108.6		\$ 22,509.93

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'").