

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

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|--------------------|---|------------------|
| JAMES PUCKETT, JR. |) | |
| Appellant, |) | |
| |) | |
| v. |) | CAVC No. 20-1700 |
| |) | 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 **\$9,330.30**.

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) ("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 this case, the parties agreed to a joint to terminate the appeal. Appellee agreed Appellant had submitted to VA a properly executed NOD under the legacy appeal system as well as a request for good cause to submit the NOD late. See

pages 1-9 of the Joint Motion to Terminate. The mandate was issued on August 12, 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. Puckett 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. Puckett 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. In this case, the parties agreed to a joint motion to terminate the appeal. 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).

Ten attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Jenna Zellmer, Cecilia Santostefano, Amy Odom, Barbara Cook, Dvora Louria, Madeline Becker, Christian McTarnaghan, Danielle M. Gorini, Alec Saxe, and Zachary Stolz.¹ Attorney Jenna Zellmer graduated from Boston

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 Baldridge v. Nicholson*, 19 Vet.App. 227, 237-38 (2005) ("the fees sought must be 'based on the distinct contribution of each individual counsel.'"). "The use in involved litigation of a team of attorneys who divide up 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. Douhgherty 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.”).

University Law School in 2013 and the *Laffey* Matrix establishes that \$452.00 is the prevailing market rate for an attorney with her experience.² Cecilia Santostefano graduated from Syracuse University Law School in 2018 and the *Laffey* Matrix establishes that \$369.00 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. 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. Dvora Louria 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. Madeline Becker graduated from Boston College Law

² 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).*

School in 2018 and the *Laffey* Matrix establishes that \$369.00 is the prevailing market rate for an attorney with her experience. Christian McTarnaghan graduated from Suffolk University Law School in 2014 and the *Laffey* Matrix establishes that \$380.00 is the prevailing market rate for an attorney with his experience. 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. Alec Saxe graduated from Boston College Law School in 2016 and the *Laffey* Matrix establishes that \$380.00 is the prevailing market rate for an attorney with his 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.

Dalton Chapman is a paralegal for the law firm of Chisholm Chisholm & Kilpatrick who worked on this case. The Court has found that "the Laffey Matrix . . . is a reliable indicator of fees and is far more indicative of the prevailing market rate in the jurisdiction, particularly as to cases involving fees to be paid by government entities" *Wilson v. Principi*, 16 Vet.App. 509, 513 (2002). The U.S. Supreme Court in *Richlin Sec. Service Co. v. Chertoff*, 553 U.S. 571, 590 (2008), held "...that a prevailing party that satisfies EAJA other requirements may recover its paralegal fees from the Government at prevailing market rates."

According to the Laffey Matrix, the prevailing market rate for paralegals from June 1, 2016 and after is \$180.00 per hour. Therefore, Appellant seeks fees at the rate of \$180.00 per hour for representation services before the Court for Mr. Chapman's time as a paralegal.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$210.56 per hour for Ms. Zellmer, Ms. Santostefano, Ms. Louria, Ms. Becker, Mr. McTarnaghan, Ms. Gorini, Mr. Saxe, and Mr. Stolz for representation services before the Court.³ This rate per hour, multiplied by the number of hours billed for these eight attorneys (39.40) results in a total attorney's fee amount of \$8,296.07.

Appellant seeks attorney's fees at the rate of \$203.00 per hour for Ms. Cook's representation services before the Court.⁴ This rate per hour, multiplied by

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 of the EAJA rate), to December 2020 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181.

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, December 2020, divided by the data from the Midwest

the number of hours billed for Ms. Cook (2.80) results in a total attorney's fee amount of \$568.40.

Appellant seeks attorney's fees at the rate of \$206.31 per 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 (0.80) results in a total attorney's fee amount of \$165.05.

Appellant seeks attorney's fees at the rate of \$180.00 per hour for Mr. Chapman's representation services before the Court. This rate per hour, multiplied by the number of hours billed for Mr. Chapman (0.40) results in a total attorney's fee amount of \$72.00.

Consumer Price Index-U for December 2017 or 230.548.

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 December 2020 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).

In addition, Appellant seeks reimbursement for the following expenses:

Filing Fee: \$50.00

Federal Express: \$53.49

Federal Express: \$69.82

Federal Express: \$28.90

Federal Express: \$26.57

Based upon the foregoing, the total fee and expense sought is **\$9,330.30.**

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 Puckett, Jr.
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 8/17/2021

Case No. 278501

Client: Puckett, Jr., Mr. James

| | | | <u>Hours</u> |
|------------|----------|---|--------------|
| 2/4/2020 | JENNA | Reviewed Board decision, researched caselaw, recommended an appeal to CAVC, and proposed legal arguments. | 0.60 |
| 3/9/2020 | CSANTOST | Reviewed file and appeal documents. Filed Notice of Appeal, Notice of Appearance for Z. Stolz as lead counsel, and Fee Agreement with the Court. Received, reviewed, and saved Court confirmation email to the file. Updated case file. | 0.10 |
| 3/10/2020 | CSANTOST | Reviewed the docket and ensured proper docketing of appeal documents. Updated case file. | 0.10 |
| 3/16/2020 | DVORA | Drafted and filed notice of appearance. Updated client file. | 0.10 |
| 3/16/2020 | MBECKER | Prepared and filed notice of appearance, saved to client file, reviewed docket, updated client file | 0.20 |
| 4/9/2020 | MBECKER | Received and reviewed BVA decision and transmittal, saved to and updated client file | 0.10 |
| 4/20/2020 | MBECKER | Received and reviewed OGC's notice of appearance (Wolinsky), saved to and updated client file | 0.10 |
| 5/11/2020 | MBECKER | Received and reviewed RBA certificate, saved to and updated client file | 0.10 |
| 5/20/2020 | MBECKER | Received and reviewed message that RBA was received and uploaded, ensured correct BVA decision was included, updated client file | 0.10 |
| 6/3/2020 | DCHAPMAN | Reviewed record before agency for completeness | 0.40 |
| 6/7/2020 | MBECKER | Received and reviewed message that there was no RBA dispute, updated client file | 0.10 |
| 6/10/2020 | DVORA | Drafted letter to client regarding the status of his case. Updated client file. | 0.10 |
| 7/17/2020 | DVORA | Received and reviewed notice to file brief, saved, calculated brief due date, and updated client file. | 0.10 |
| 8/24/2020 | DVORA | Received and reviewed PBC order, saved, calculated memo due date, and updated client file. | 0.20 |
| 8/26/2020 | DVORA | Received a call from the client and discussed case status. Updated client file. | 0.10 |
| 8/28/2020 | DVORA | Reviewed and updated case notes regarding strategy. | 0.10 |
| 9/3/2020 | CMC | Draft and file Rule 33 certificate of service. Update client file. | 0.20 |
| 9/3/2020 | CMC | Make final edits to and send summary of the issue to VA and CLS. Update client file. | 0.20 |
| 9/3/2020 | CMC | Prepare and file notice of appearance. Check docket for proper filing. Update client file. | 0.20 |
| 9/3/2020 | CMC | Draft and send letter to client enclosing PBC and explaining next steps. | 0.30 |
| 9/3/2020 | CMC | Review BVA decision and dockets relevant to drafting PBC memo. Review Percy. Draft PBC memo. | 2.30 |
| 9/17/2020 | CMC | Receive and review request to send PDF of pages cited in my memo to CLS. | 0.10 |
| 9/17/2020 | CMC | Participate in PBC and memo to file with result. | 0.30 |
| 9/17/2020 | CMC | Review memo and evidence in preparation for conference. | 0.30 |
| 9/22/2020 | ZACH | Participated in litigation strategy discussion regarding opening brief in light of offered joint motion. | 0.30 |
| 9/29/2020 | CMC | Telephone call with client about status of case and remand offer. | 0.20 |
| 9/29/2020 | CMC | Draft and send email to VA rejecting remand offer and presenting counter offer. | 0.30 |
| 10/10/2020 | CMC | Receive and review email from VA that we will not be able to come to an agreement on the case. | 0.20 |
| 11/30/2020 | CMC | Review RBA for factual development and briefing purposes 1-596. | 0.50 |
| 11/30/2020 | CMC | Draft the statement of the case section of opening brief. | 1.70 |
| 12/1/2020 | CMC | Begin to draft argument section of opening brief. Read pertinent case law and regulations. | 2.60 |

Exhibit A

Time from 10/1/2018 to 8/17/2021

Case No. 278501

Client: Puckett, Jr., Mr. James

| | | | <u>Hours</u> |
|-----------|---------|---|--------------|
| 12/1/2020 | CMC | Continue to draft revise argument section of opening brief. Draft waiver section. Begin to draft section on due process violation. | 2.60 |
| 12/1/2020 | CMC | Continue to draft argument section of opening brief. Focus on nonjurisdictional section. | 2.80 |
| 12/2/2020 | BARBARA | Review draft brief and edit facts, edit due process, edit for clarity and accuracy and strength | 1.60 |
| 12/2/2020 | CMC | Continue to draft argument section of opening brief. Finish due process argument. | 2.40 |
| 12/3/2020 | CMC | Finalize and file opening brief. | 0.60 |
| 12/3/2020 | CMC | Begin to revise opening brief. | 1.50 |
| 12/3/2020 | CMC | Continue to draft and revise opening brief. Ensure all legal and record citations are accurate. | 2.80 |
| 2/2/2021 | AODOM | Prepared and filed notice of appearance; updated file. | 0.20 |
| 3/18/2021 | CMC | Receive and review VA's brief to determine necessity of reply. Determine reply necessary. | 0.40 |
| 3/25/2021 | CMC | Telephone call with client about status of case. | 0.30 |
| 3/30/2021 | ZACH | Reviewed notes and participated in litigation strategy discussion, "bad form" cases, and reply briefing. | 0.20 |
| 5/10/2021 | CMC | Begin to outline reply brief. Start with VA's argument. Review case law integral to case. | 0.90 |
| 5/13/2021 | CMC | Continue to draft Percy section of reply brief. | 0.90 |
| 5/13/2021 | CMC | Continue to draft reply brief. Begin section in response to Percy argument. | 1.80 |
| 5/13/2021 | CMC | Continue to draft reply brief. Focus on claim processing rule section. | 2.30 |
| 5/17/2021 | BARBARA | Review and edit draft reply; pull arguments from Walter Hall and integrate, change order of some arguments and edit for clarity. | 1.20 |
| 5/17/2021 | CMC | Finalize and file reply brief. | 0.90 |
| 5/17/2021 | CMC | Continue to draft reply brief. | 1.50 |
| 5/28/2021 | CMC | Receive and review notice with ROP. Update client file. | 0.10 |
| 6/7/2021 | CMC | Review ROP. Compare to record cites in all filed brief. Draft and file response to ROP. | 0.30 |
| 6/8/2021 | CMC | Receive and review judicial assignment. Update client file. | 0.10 |
| 6/9/2021 | CMC | Receive and review panel order. Update client file. | 0.10 |
| 6/17/2021 | CMC | Receive and review oral argument order. Update client calendar and file. | 0.10 |
| 7/8/2021 | AODOM | Reviewed Secretary's brief and draft notice of supplemental authorities; prepared edits to draft. | 0.30 |
| 7/9/2021 | ZACH | Reviewed notes on case. Email exchange with VA counsel concerning settlement of case before prep for oral argument in light of several other settlement negotiations for similar issues. | 0.80 |
| 7/26/2021 | ALEC | Reviewed draft JMT and stipulated agreement to ensure inclusion of all agreed upon issues and errors, and for accuracy of legal and record citations, spelling and grammar; made all necessary revisions. | 0.50 |
| 7/26/2021 | AODOM | Reviewed proposed settlement agreement; proposed edited language and new negotiation strategy. | 0.30 |
| 7/26/2021 | ZACH | Reviewed proposed settlement and discussed with team | 0.70 |
| 7/28/2021 | ALEC | Called client to discuss settlement and need to complete new NOD. Drafted memo to file summarizing call. | 0.30 |
| 7/29/2021 | ALEC | Client called to discuss process of filling out new NOD. Walked him through the procedure. Drafted memo to file summarizing call. | 0.30 |

Exhibit A

Time from 10/1/2018 to 8/17/2021

Case No. 278501

Client: Puckett, Jr., Mr. James

| | | | <u>Hours</u> |
|-----------|----------|---|--------------|
| 7/30/2021 | ALEC | Finalized settlement materials and sent to OGC for final approval and efilng. | 0.40 |
| 8/4/2021 | ALEC | Receive and review email from the Court with Order revoking oral argument order. Updated client file. | 0.10 |
| 8/4/2021 | ALEC | Receive and review email from the Court with notice that JMT and stipulated agreement was filed. Reviewed materials and compared it to draft materials to ensure it contained agreed upon changes. Updated client file. | 0.20 |
| 8/12/2021 | ALEC | Receive and review email from the Court with notice of mandate. Ensured document was correct. Updated client file. | 0.10 |
| 8/12/2021 | ALEC | Receive and review emails from the Court with JMT Order and notice of Mandate. Ensured Order was correct. Updated client file. | 0.10 |
| 8/17/2021 | 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 |
| 8/17/2021 | DANIELLE | Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review. | 0.90 |
| 8/17/2021 | 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> |
|-----------------|--------------|------------------|--------------------|
| ALEC | 2.0 | \$ 210.56 | \$ 421.12 |
| AODOM | 0.8 | \$ 206.31 | \$ 165.05 |
| BARBARA | 2.8 | \$ 203.00 | \$ 568.40 |
| CMC | 31.8 | \$ 210.56 | \$ 6,695.81 |
| CSANTOST | 0.2 | \$ 210.56 | \$ 42.11 |
| DANIELLE | 1.1 | \$ 210.56 | \$ 231.62 |
| DCHAPMAN | 0.4 | \$ 180.00 | \$ 72.00 |
| DVORA | 0.7 | \$ 210.56 | \$ 147.39 |
| JENNA | 0.6 | \$ 210.56 | \$ 126.34 |
| MBECKER | 0.7 | \$ 210.56 | \$ 147.39 |
| ZACH | 2.3 | \$ 210.56 | \$ 484.29 |
| | 43.4 | | \$ 9,101.52 |

| | | |
|-----------|------------------|---------|
| Expenses: | Filing Fee: | \$50.00 |
| | Federal Express: | \$53.49 |
| | | \$69.82 |
| | | \$28.90 |
| | | \$26.57 |

Total: \$9,330.30

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'").