

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

CLIFTON ARLINE	)	
Appellant,	)	
	)	
v.	)	CAVC No. 18-765
	)	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 **\$29,281.52**.

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 set aside and remanded that portion of the Board's January 26, 2018 decision denying an increased rating for schizophrenia higher than fifty percent prior to December 7, 2011 based upon the Board's failure to provide an adequate statement of reasons or bases, and affirmed the issue of TDIU. See pages 1-26 of the Decision. It has been sixty days since Entry of Judgment issued on July 26, 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. Arline 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. Arline 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: Lisa Ioannilli, Danielle M. Gorini, Nicholas Phinney, April Donahower, Christian McTarnaghan, Barbara Cook, and Zachary Stolz.<sup>1</sup> Attorney

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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

Lisa Ioannilli graduated from George Washington University Law School in 2009 and the *Laffey* Matrix establishes that \$532.00 is the prevailing market rate for an attorney with her experience.<sup>2</sup> Danielle Gorini graduated from Roger Williams

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Cir. 1988); *see also* *Baldrige v. Nicholson*, 19 Vet.App. 227, 237-38 (2005)(“the fees sought must be ‘based on the distinct contribution of each individual counsel.’”). “The use in involved litigation of a team of attorneys who divide up the work is common today for both plaintiff and defense work.” *Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) *holding modified by* *Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). “Careful preparation often requires collaboration and rehearsal[.]” *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998). As demonstrated in Exhibit A, each attorney involved in the present case provided a distinct, and non-duplicative contribution to the success of the appeal. *See* *Baldrige*, 19 Vet.App. at 237 (“An application for fees under EAJA where multiple attorneys are involved must also explain the role of each lawyer in the litigation and the tasks assigned to each, thereby describing the distinct contribution of each counsel.”). In this case, the billable time is divided into two documents, Exhibit A and Exhibit A continued, as a new time keeping program was installed beginning on October 1, 2018.

<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).

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 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. 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. 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 \$204.78 per hour for Ms. Ioannilli, Ms. Gorini, Mr. Phinney, Ms. Donahower, 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

by the number of hours billed for these six attorneys (151.00) results in a total attorney's fee amount of \$30,921.80.

Appellant seeks attorney's fees at the rate of \$198.01 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 (12.40) results in a total attorney's fee amount of \$2,455.32.

Based upon the foregoing, the total fee amount is **\$33,377.12**. However, in the exercise of billing judgment for the TDIU argument not won, Appellant will voluntarily reduce the total fee amount by 20 hours and seek a reduced fee of **\$29,281.52**.

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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 September 2018 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).

<sup>4</sup> Per the agreement in *Bradley v. Wilkie*, 17-3797, this rate was determined using the formula proposed by the National Veterans Legal Services Program, Veterans Benefit Manual, [1683] (Barton Stichman et al. eds. 2017-18 ed.). Specifically, the hourly rate is determined using the \$193.83 hourly rate from the last month the Cincinnati Consumer Price Index-U was available in the second half of 2017, multiplying that number using the Midwest Consumer Price Index-U for the midpoint in the case, September 2018, divided by the data from the Midwest Consumer Price Index-U for December 2017 or 230.548.



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,  
Clifton Arline  
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>
2/2/2018 LMI	Reviewed and annotated BVA decision and assessed for appeal to CAVC. Drafted a memo to the file.	0.60
2/13/2018 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 file.	0.20
2/20/2018 DMG	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. Reviewed docketed appeal document. Updated case information and case file.	0.20
2/28/2018 AD	Prepared and e-filed notice of appearance; reviewed docket; updated client calendar	0.20
3/14/2018 AD	Received emails from Court with BVA decision transmittal and copy of decision; reviewed documents for accuracy and saved to client's file; updated client calendar	0.10
4/11/2018 AD	Received and reviewed email from court with VA counsel's notice of appearance; updated client calendar	0.10
4/12/2018 AD	Received email from court with RBA certificate of service; reviewed certificate for accuracy and saved to client's file; updated client calendar	0.10
4/16/2018 AD	Received and reviewed notice of RBA upload; updated client file with date of RBA receipt; updated client calendar	0.10

## Exhibit A

			<u>Hours</u>
4/17/2018 AD	Received and reviewed notice of acceptance of RBA; prepared letter advising client of same		0.10
4/17/2018 NP	Reviewed RBA to determine need for dispute		1.60
4/23/2018 NP	Reviewed amended RBA to determine need for dispute		0.20
5/4/2018 AD	Received email from court with notice to file brief; reviewed notice for accuracy and saved to client's file; calculated brief due date; updated client calendar		0.10
5/16/2018 AD	Received email from court with PBC order; reviewed order for accuracy and saved to client's file; calculated memo due date; updated client calendar		0.10
5/23/2018 AD	Received email from court with VA counsel's motion to reschedule PBC; reviewed motion for accuracy and saved to client's file		0.10
5/23/2018 AD	Corresponded with VA counsel and CLS regarding VA counsel's need to reschedule PBC; saved correspondence to client's file		0.10
5/25/2018 AD	Received email from court with order granting VA's motion to reschedule PBC; reviewed order for accuracy and saved to client's file; updated client calendar		0.10
6/8/2018 AD	Reviewed BVA decision for legal and factual errors; began adding to case map for briefing purposes		1.50
6/13/2018 AD	Completed draft of PBC memo and saved in proper form; emailed memo to VA counsel and CLS; prepared and e-filed certificate of service;		2.00

## Exhibit A

			<u>Hours</u>
	prepared letter to client with copy of memo; updated client calendar		
6/13/2018 AD	Drafted PBC memo		2.90
6/27/2018 AD	Reviewed PBC memo to prepare for PBC; PBC held; drafted summary of PBC for the file; called client to discuss PBC; updated client calendar		0.50
8/17/2018 AD	Reviewed case notes and memo to prepare to draft opening brief		0.40
8/17/2018 AD	Began drafting opening brief statement of the case		2.00
8/20/2018 AD	Continued drafting statement of the case		2.00
8/21/2018 AD	Outlined first portion of argument of opening brief; began drafting first portion of argument		2.00
8/26/2018 AD	Began drafting argument portion of opening brief		1.90
8/27/2018 AD	Continued drafting argument portion of opening brief		2.30
8/28/2018 AD	Outlined second argument section		1.50
8/28/2018 AD	Continued drafting first portion of argument section		1.80
8/29/2018 AD	Continued drafting second argument section		1.80
8/29/2018 AD	Began drafting second argument section		2.50
8/30/2018 AD	Continued drafting second argument section		2.90
8/30/2018 AD	Drafted second argument section		3.00

## Exhibit A

		<u>Hours</u>
9/4/2018 AD	Revised opening brief argument; drafted issues presented	2.80
9/7/2018 BJC	Start to review draft brief	0.30
9/8/2018 BJC	Continue to review draft and suggest additional arguments, suggest edits to existing ones	2.40
9/9/2018 AD	Revised and edited draft opening brief	1.80
9/10/2018 AD	Implemented additional edits to draft opening brief	0.20
9/10/2018 AD	Made final edits to draft opening brief; checked citations to record and authority; efiled brief; updated client calendar	1.00
		<u>Amount</u>
		43.50 \$8,889.66
		<u>Amount</u>
		43.50 \$8,889.66

### Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
April Donahower	38.00	204.78	\$7,781.64
Barbara J. Cook	2.70	198.01	\$534.62
Danielle M. Gorini	0.40	204.78	\$81.92
Lisa M Ioannilli	0.60	204.78	\$122.87
Nicholas Phinney	1.80	204.78	\$368.61

# Exhibit A

Time from 10/1/2018 to 9/29/2021

Case No. 257821

Client: Arline, Mr. Clifton

			<u>Hours</u>
11/8/2018	APRIL	Received email from Court with VA's brief; reviewed for accuracy and saved to client's file; updated client calendar	0.10
11/8/2018	APRIL	Received, reviewed, and responded to VA counsel's request for position on extension motion; updated client file	0.10
11/28/2018	APRIL	Reviewed arguments in VA's response brief	0.20
1/7/2019	APRIL	Outlined IR psych portion of reply brief; began drafting psych portion of reply brief	2.70
1/8/2019	APRIL	Continued drafting IR psych section of reply brief	3.50
1/9/2019	APRIL	Completed draft of reply brief	2.00
1/9/2019	APRIL	Continued drafting reply brief	3.00
1/10/2019	APRIL	Made final revisions and edits to draft reply; checked citations to record and authority; efiled brief; updated client calendar	0.70
1/10/2019	APRIL	Implemented edits to draft reply brief	1.10
1/10/2019	CMC	Review reply brief for legal accuracy.	0.50
1/15/2019	APRIL	Returned client's phone call; provided status update	0.10
1/22/2019	APRIL	Received email from court with record of proceedings filed by VA counsel; reviewed ROP against record citations in briefs; prepared and efiled response to ROP	0.20
1/24/2019	APRIL	Received email from court with assignment of case to judge; reviewed for accuracy and saved to client's file; updated case file with judge assignment	0.10
4/22/2019	APRIL	Called client to provide status update; left voice mail requesting call back; updated client file	0.10
4/29/2019	APRIL	Received return call from client; provided status update; updated client file	0.10
5/16/2019	APRIL	Received email from court with order reassigning case to different judge; reviewed order for accuracy and saved to client's file; updated client calendar	0.10
6/5/2019	APRIL	Received and reviewed email from court with VA counsel's notice of appearance; updated client calendar	0.10
7/12/2019	APRIL	Reviewed Court's decision against issues argued in brief	1.00
7/16/2019	ZACH	Reviewed Court decision, pleadings, and notes in case. Prepared letter to client concerning Court's decision. Ensured case file was updated with necessary letters, pleadings, and correspondence so that client could be properly informed of case progress, disposition, and next steps.	0.70
7/17/2019	APRIL	Drafted summary of court's decision for the file.	0.30
7/23/2019	APRIL	Began compiling points of law/fact for discussion in panel motion; reviewed court rule concerning motion	0.30
7/23/2019	APRIL	Discussed court's decision and next steps with client; updated client file	0.20
7/24/2019	APRIL	Prepared for and held meeting to discuss motion for panel; recorded notes from meeting in client's file	1.80
7/24/2019	ZACH	Reviewed record and Court's decision. Participated in strategy meeting for panel review motion.	1.00
7/26/2019	APRIL	Reviewed and annotated Cantrell decision; researched regulatory history of 4.16	1.40
7/26/2019	APRIL	Began drafting motion for panel consideration	2.00
7/27/2019	APRIL	Continued drafting motion for panel consideration	2.70
7/28/2019	APRIL	Continued drafting motion for panel consideration	2.60
7/31/2019	APRIL	Completed draft of motion for panel	3.80
7/31/2019	BARBARA	Start to review motion for panel	0.60

# Exhibit A

Time from 10/1/2018 to 9/29/2021

**Case No. 257821**

**Client: Arline, Mr. Clifton**

				<u><b>Hours</b></u>
8/1/2019	APRIL	Revised draft of motion for panel decision		3.40
8/1/2019	APRIL	Made additional revisions to draft motion for panel		0.70
8/1/2019	BARBARA	Continue to review motion for panel draft, draft memo to the file.		0.40
8/1/2019	BARBARA	Review and edit revised draft of motion, add definition of PWE		1.20
8/2/2019	APRIL	Finalized and e-filed motion for panel decision; updated client file		0.20
8/2/2019	APRIL	Made additional revisions to motion for panel		0.60
8/2/2019	ZACH	Reviewed motion for reconsideration. Discussed with April		0.80
10/21/2019	APRIL	Returned client's call; provided status update; prepared follow up letter; noted call in client's file		0.20
12/30/2019	APRIL	Returned client's call; provided status update; noted call in client's file		0.10
1/24/2020	APRIL	Received emails from Court reassigning case to Chief Judge Bartley; reviewed order and saved to client's file; updated judge assignment in case file		0.10
2/4/2020	APRIL	Received and reviewed email from Court with order scheduling oral argument; reviewed order for accuracy and saved to client's file; updated client calendar		0.10
2/10/2020	APRIL	Received phone call from opposing counsel about proposed motion; noted call in client's file; return call; noted calls in client's file		0.20
2/10/2020	APRIL	Received and reviewed VA counsel's email regarding supplemental briefing; saved email to client's file		0.10
2/10/2020	APRIL	Discussed Secretary's motion with Zach and Barb; responded to request for position; updated client file		0.10
2/12/2020	APRIL	Received email from Court with VA counsel's motion for supplemental briefing; reviewed motion and saved to client's file		0.10
2/14/2020	APRIL	Planned oral argument preparation details		0.30
2/19/2020	APRIL	Received email from Court with order granting Secretary's motion for leave to file a supplemental brief; reviewed order for accuracy and saved to client's file; updated client calendar		0.10
2/28/2020	APRIL	Reviewed record of proceedings for procedural history and pertinent facts; researched case law concerning reasonable accommodations; printed and assembled materials for oral argument binder		2.40
3/3/2020	APRIL	Received email from Court with VA's supplemental brief; reviewed document and saved to client's file; emailed VA counsel for position on motion for leave to respond		0.10
3/3/2020	APRIL	Prepared for and attended meeting to discuss approach to oral argument		2.00
3/3/2020	ZACH	Reviewed all pleadings in case. Conducted legal research concerning protected work. Participated in first walk through with oral argument team concerning oral argument strategy.		3.00
3/5/2020	APRIL	Began drafting response		1.80
3/6/2020	APRIL	Reviewed cases citing to Kahana authored by panel judges. Called client to provide status update; noted call in client's file		2.60
3/6/2020	APRIL	Reviewed cases citing to Cantrell or otherwise involving PWE authored by panel members. Reviewed cases about agency speculation and vocational evidence; added to outline of response to supplemental brief		3.00
3/6/2020	APRIL	Researched sheltered workshops and continued drafting outline of supplemental response		0.90
3/7/2020	APRIL	Continued drafting response to VA's supplemental brief		1.60
3/8/2020	APRIL	Continued drafting response to supplemental brief		0.70
3/8/2020	APRIL	Continued drafting response to supplemental brief		2.80

# Exhibit A

Time from 10/1/2018 to 9/29/2021

**Case No. 257821**

**Client: Arline, Mr. Clifton**

			<u>Hours</u>
3/9/2020	APRIL	Continued drafting response to supplemental brief	0.60
3/9/2020	APRIL	Completed draft of response to supplemental brief	3.00
3/9/2020	APRIL	Efiled Barb's notice of appearance; updated client file	0.10
3/9/2020	APRIL	Revised response to supplemental brief per Barb's comments	1.50
3/9/2020	BARBARA	rev, edit supp pleading	0.60
3/10/2020	APRIL	Made revisions and edits to draft response to supplemental brief; checked citations to record and authority	1.20
3/10/2020	APRIL	Finalized and efiled response to supplemental brief	0.40
3/10/2020	ZACH	Reviewed final version of response and discussed with April.	0.80
3/12/2020	APRIL	Received and email from Court with order rescheduling oral argument; reviewed order for accuracy and saved to client's file; updated client calendar	0.10
3/13/2020	APRIL	Began review of ROP to prepare for oral argument	1.10
3/15/2020	APRIL	Received email from Court with order canceling oral argument; reviewed order for accuracy and saved to client's file; updated client calendar	0.10
3/17/2020	APRIL	Called client to provide status update re: oral argument cancellation; noted call in client's file	0.10
3/24/2020	APRIL	Reviewed case to weigh request for decision on pleadings vs. pursuing oral argument	0.10
5/4/2020	APRIL	Received email from Court with order rescheduling oral argument; reviewed order for accuracy and saved to client's file; updated client calendar	0.10
5/22/2020	APRIL	Returned client's call; left voicemail requesting call back; noted attempt in client's file	0.10
5/22/2020	APRIL	Returned client's call; provided status update; noted call in client's file	0.10
5/27/2020	APRIL	Planned preparation for oral argument	0.30
6/3/2020	APRIL	Prepared for and attended discussion of approach to oral argument	2.50
6/3/2020	BARBARA	Prepared for walk through and discuss case with team	1.40
6/3/2020	ZACH	Email exchange with Clerk's office regarding upcoming oral argument.	0.20
6/3/2020	ZACH	Prepared for walk through of oral argument including review of cited cases. Participated in walk through.	2.90
6/5/2020	APRIL	Began review and annotation/bookmarking of record of proceedings to prepare for oral argument	1.40
6/10/2020	APRIL	Reviewed pleadings, reviewed and annotated record of proceedings, conducted research regarding reasonable accommodations, conducted research regarding Board grants of TDIU for protected work environment	3.00
6/10/2020	APRIL	Continued annotating record of proceedings, reviewed notes from oral argument walkthrough, drafted and revised opening statement, rehearsed opening statement, held moot oral argument and subsequent discussion	3.30
6/10/2020	ZACH	Prepared for and participated in first full moot. Preparation included review of all pleadings and refreshing on caselaw. Participation included acting as "judge" and asking questions and helping with oral argument strategy.	2.90
6/15/2020	APRIL	Corresponded with VA counsel regarding narrowing issues for discussion at oral argument	0.10
6/16/2020	APRIL	Received and reviewed email from Court with VA counsel's notice of appearance; updated file	0.10
6/16/2020	APRIL	Researched BVA decisions for grounds for grants/denials of TDIU post-Cantrell	1.30
6/17/2020	APRIL	Attended orientation call for oral argument	0.10



# Exhibit A

Time from 10/1/2018 to 9/29/2021

**Case No. 257821**

**Client: Arline, Mr. Clifton**

			<u><b>Hours</b></u>
6/17/2020	APRIL	Reviewed feedback from first moot; drafted and revised request for relief; revised opening statement; researched single judge decisions regarding protected work environment; attended second moot; held discussion of moot	3.00
6/17/2020	BARBARA	Prepare for moot, talk with court	1.80
6/17/2020	ZACH	Prepared for and participated in final moot. Preparation included refreshing on legal research and reading cases not previously read. Participation was as "judge" for the moot and as part of discussion of oral argument strategy.	2.50
6/18/2020	APRIL	Phone call with court clerk's office to confirm pronunciation of client's name for oral argument; noted call in client's file	0.10
6/18/2020	APRIL	Researched case law concerning unreasonable accommodations and concurrent receipt of SSDI and ADA protection; reviewed pleadings; noted points for coverage at oral argument; called client to provide information regarding oral argument; noted call in client's file	2.30
6/19/2020	APRIL	Made final preparations for oral argument - supplemented research, revised opening statement and request for relief, and finalized outline	3.00
6/19/2020	APRIL	Reviewed case discussed at oral argument and drafted notice of supplemental authority	0.60
6/19/2020	APRIL	Attended oral argument; participated in argument recap discussion	2.80
6/19/2020	BARBARA	Attended oral arguments and post argument discussion, agree to submit supp authority	2.80
6/20/2020	BARBARA	Review and edit draft supp authority	0.50
6/23/2020	APRIL	Reviewed oral argument recording for incorporation into notice of supplemental authority; revised notice	0.50
6/23/2020	APRIL	Finalized and efiled notice of supplemental authority	0.20
6/23/2020	BARBARA	Review revised draft supp authority	0.10
6/25/2020	APRIL	Listened to client voice mail and noted contents in client's file	0.10
6/26/2020	APRIL	Returned client's call; discussed oral argument; noted call in client's file	0.10
9/18/2020	APRIL	Returned missed client call; provided status update; noted call in client's file	0.10
12/21/2020	APRIL	Called client to provide status update; noted call in client's file	0.10
1/26/2021	APRIL	Reviewed pleadings and Skaar decision; drafted 30(b) notice re: Skaar v. Wilkie	0.50
1/26/2021	BARBARA	Review 30(b)	0.20
1/27/2021	APRIL	Edited, finalized, and efiled notice of supplemental authority	0.30
3/9/2021	BARBARA	Prepare and file notice of appearance; update file.	0.10
3/11/2021	APRIL	Returned client's call; provided status update and answered client questions; noted call in client's file	0.10
3/11/2021	APRIL	Listened to voicemail received from client; noted contents in client's file; updated client file for follow up	0.20
4/27/2021	APRIL	Received phone call from client; provided status update; noted call in client's file	0.20
6/23/2021	APRIL	Returned client's call; provided status update; noted call in client's file	0.10
7/1/2021	APRIL	Received email from court with precedential decision; saved decision to client's file; reviewed decision against arguments in briefs; conducted legal research and made notes on potential basis for appeal	1.30
7/7/2021	ZACH	Reviewed Court's lengthy precedential decision, pleadings, and notes in case. Prepared letter to client concerning Court's decision. Ensured case file was updated with necessary letters, pleadings, and correspondence so that client could be properly informed of case progress, disposition, and next steps.	0.90
7/13/2021	APRIL	Called client to discuss court's decision; answered client questions; noted call in client's file	0.40

# Exhibit A

Time from 10/1/2018 to 9/29/2021

**Case No. 257821**

**Client: Arline, Mr. Clifton**

			<u>Hours</u>
7/27/2021	APRIL	Received email from Court with order entering judgment; reviewed order for accuracy and saved to client's file; updated client calendar	0.10
8/5/2021	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
8/10/2021	APRIL	Returned missed client call; provided status update; noted call in client's file	0.20
9/24/2021	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
9/29/2021	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	1.50
9/29/2021	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>
<b>APRIL</b>	<b>91.5</b>	<b>\$ 204.78</b>	<b>\$ 18,737.37</b>
<b>BARBARA</b>	<b>9.7</b>	<b>\$ 198.01</b>	<b>\$ 1,920.70</b>
<b>CMC</b>	<b>0.5</b>	<b>\$ 204.78</b>	<b>\$ 102.39</b>
<b>DANIELLE</b>	<b>1.7</b>	<b>\$ 204.78</b>	<b>\$ 348.13</b>
<b>ZACH</b>	<b>16.5</b>	<b>\$ 204.78</b>	<b>\$ 3,378.87</b>
	<b>119.9</b>		<b>\$ 24,487.46</b>

## 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'").