

**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**

Joel Newman	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. No. 18-2015
	)	
Denis McDonough,	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

**TABLE OF CONTENTS FOR APPELLANT'S APPLICATION  
FOR AWARD OF REASONABLE ATTORNEYS' FEES AND  
EXPENSES PURSUANT TO 28 U.S.C. § 2412(d)**

Pursuant to U.S. Vet. App. Electronic Rule 7, the following is the pagination of  
this PDF file:

Table of Contents .....	1
Appellant's Application for Award of Reasonable Attorneys' Fees and Expenses Pursuant to 28 U.S.C. § 2412(d) .....	2
Exhibit A .....	8
Exhibit B .....	17
Exhibit C .....	19

**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**

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Appellant,	)		
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v.	)	Vet. App. No. 18-2015	
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Denis McDonough	)		
Secretary of Veterans Affairs,	)		
	)		
Appellee.	)		

**APPELLANT'S APPLICATION FOR AWARD OF  
REASONABLE 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 U.S. Vet. App. R. 39, Appellant, Joel Newman, applies for an award of reasonable attorneys’ fees and expenses in the amount of \$37,717.64.

**PROCEDURAL HISTORY**

On February 15, 2018, the Board of Veterans’ Appeals (“Board” or “BVA”) issued a decision that, *inter alia*, denied Appellant’s character of discharge determination. Appellant filed a timely Notice of Appeal to this Court on April 18, 2018. A Rule 33 conference was held on January 3, 2019, and Appellant filed his initial brief on March 19, 2019. The Appellee submitted their brief on August 14, 2019, and Appellant’s reply brief was filed October 15, 2019.

On April 20, 2020, the matter was stayed pending the outcome of a related case, *Bowling v. Wilkie*, docket number 18-5263. Mr. Marshall Newman, the previous Appellant,

passed away on December 22, 2021, and following his death, the Court approved the uncontested substitution of his brother, Joel Newman, the current Appellant.

On August 10, 2021, the Court granted Appellant's request for a precedential opinion. The case was submitted to panel and oral arguments were scheduled for October 26, 2021. One week prior to oral arguments, the VA filed a change in position which led the Court to cancel oral arguments. This change in position regarded the legal issue in this case that warranted panel review – the correct legal standard applicable in determining veteran status per 38 U.S.C. 5303(a) and insanity per 38 U.S.C. 5303(b) and 38 C.F.R. 3.354(a).

In Appellee's filing on October 19, 2021, he agreed with Appellant that the applicable standard is the benefit of the doubt per 38 U.S.C. 5107(b), instead of the preponderance of the evidence standard. The language and cases cited in Appellee's October 19, 2021 filing warranted some additional clarity, and thus Appellant sought leave of the Court to file a response, which was granted. That response was filed on October 29, 2021. In reply, Appellee filed a response that was submitted to the Court on December 6, 2021, in which he clarified:

“[T]he benefit of the doubt standard contained in [38 U.S.C. 5107(b)] is the correct standard to apply to the evidence of record to determine whether veteran status has been established, to include determinations as to insanity pursuant to 38 U.S.C. 5303(b). This is consistent with the language of 38 U.S.C. 5107(b), which applies the benefit of the doubt to ‘any issue material to the determination of a matter.’”.

(Appellee’s Response to Appellant’s Response to Appellee’s Notice of Change in Position, December 6, 2021.)

Appellee concludes by stating, “The Secretary acknowledges the delay in providing his notice in change in position in this case... Counsel for the Secretary apologies to the Court and Appellant for this delay.” *Id.* at 2.

On June 16, 2022, the Court issued the decision in this case, stating “that—save perhaps in clear and unmistakable evidence cases as discussed later—the benefit of the doubt standard governs in all cases where VA must determine whether a claimant possesses veteran status.” *Newman v. McDonough*, No. 18-2015, at 2. The BVA’s decision was vacated and remanded in order for the Board to re-adjudicate Mr. Marshall Newman’s Character of Discharge determination with the correct legal standard. Judgment was entered on July 14, 2022. The Order was the mandate of the Court, pursuant to U.S. Vet. App. R. 41(b) effective September 12, 2022.

## **ARGUMENT**

### **I. APPELLANT IS A PREVAILING PARTY AND ELIGIBLE TO RECEIVE AN AWARD.**

To obtain “prevailing party” status, a party need only to have obtained success “on any significant issue in litigation which achieve[d] some of the benefit ... sought in bringing the suit.” *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993). Appellant is a prevailing party entitled to an award of fees and costs because the Court decided to Appellant’s favor and remanded his case. *See also Zuberi v. Nicholson*, 19 Vet. App. 541 (2006); *Sumner v. Principi*, 15 Vet. App. 256 (2001) (*en banc*).

Appellant is a party eligible to receive an award of reasonable fees and expenses because his net worth did not exceed \$2 million at the time this civil action was filed. As an officer of the Court, the undersigned counsel hereby states that Appellant's net worth did not exceed \$2 million at the time this civil action was filed and Appellant did not own any unincorporated business, partnership, corporation, association, unit of local government, or organization, of which the net worth exceeded \$7 million and which had more than 500 employees. *See Bazalo v. Brown*, 9 Vet. App. 304, 309, 311 (1996).

## **II. THE POSITION OF THE SECRETARY OF VETERANS AFFAIRS WAS NOT SUBSTANTIALLY JUSTIFIED.**

The Secretary can defeat Appellant's application for fees and costs only by demonstrating that the government's position was substantially justified. *See Brewer v. American Battle Monument Commission*, 814 F.2d 1564, 1566-67 (Fed. Cir. 1987); *Stillwell v. Brown*, 6 Vet. App. 291, 301 (1994). The U.S. Supreme Court has held that for the position of the government to be substantially justified, it must have a "reasonable basis both in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988); *accord, Beta Sys. v. United States*, 866 F.2d 1404, 1406 (Fed. Cir. 1989).

In this case, the Secretary's administrative position was not substantially justified. As described more fully in the "Procedural History," *supra*, the Secretary conceded error in its position that preponderance of the evidence was the legal standard in veteran status cases, including insanity determinations; and he agrees with Appellant that the applicable legal standard is the benefit of the doubt. This change in position was not the result of a change in law or facts, but was a realization made by the Secretary "after further

consultation with relevant stakeholders in preparation for oral argument.” (Appellee’s Response to Appellant’s Response to Appellee’s Notice of Change in Position, December 6, 2021, at 2.) These errors, and the other errors made by the Board, had no reasonable basis in fact or in law.

### **III. ITEMIZED STATEMENT OF SERVICES RENDERED AND AMOUNTS OF REASONABLE FEES AND EXPENSES.**

An itemized statement of the services rendered is attached to this application as Exhibit A, and the reasonable fees and expenses for which Appellant seeks compensation are listed below in this section. Included in Exhibit A is a certification that the lead counsel has (1) reviewed the combined billing statement and is satisfied that it accurately reflects the work performed by all counsel and (2) considered and eliminated all time that is excessive or redundant. *Baldrige and Demel v. Nicholson*, 19 Vet. App. 227, 240 (2005).

Appellant seeks attorneys’ fees at the following rates for representation in the Court of Appeals for Veterans Claims.<sup>1</sup>

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<sup>1</sup> A rate in excess of \$125 per hour for counsel for Appellant in this case is justified based on the increase in the cost of living since the EAJA was amended in March 1996. *See* 28 U.S.C. § 2412(d)(2)(A)(ii). The \$125 attorney fee rate, adjusted for inflation for the San Francisco Metropolitan Area, was \$239.55 in March 2019, the month Appellant filed Appellant’s brief. *See* Bureau of Labor Statistics Data, CPI-U (Exhibit B). This rate was calculated by using the Department of Labor’s Consumer Price Index for Urban Consumers (“CPI-U”) in the San Francisco Metropolitan area adjusted for inflation. *See* Exhibit B; *Mannino v. West*, 12 Vet. App. 242 (1999). The market rates for Appellant’s attorneys exceeded \$239.55 per hour during the relevant time period. *Covington v. District of Columbia*, 839 F. Supp. 894, 904-05 (D.D.C. 1993), *aff’d*, 58 F.3d 1101 (D.C. Cir. 1995). *See* “Laffey Matrix” (Exhibit C). The prevailing market rate for the work done by paralegal Rebecca Beville is at least \$140.00 per hour from June 1, 2011 to the present. *See Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996); *see also Richlin Security Service Co. v. Chertoff, Secretary of Homeland Security*, 128 S. Ct. 2007 (2008).

<u>Name</u>	<u>Rate</u>	<u>Hours</u>	<u>Fee Amount</u>
Rose Carmen Goldberg (2015 law graduate)	\$239.55	69.55	\$ 16,660.70
Maureen Siedor (2012 law graduate)	\$239.55	75.1	\$ 17,990.21
Barbara Saavedra (1997 law graduate)	\$239.55	9.1	\$2,179.91
Rebecca Beville (Paralegal)	\$140.00	5.8	\$812
<b>TOTAL:</b>			<b>\$ 37,642.82</b>

An itemization of expenses for which reimbursement is sought is as follows:

<u>Nature of Expenses</u>	<u>Amount</u>
Photocopying	\$ 74.85
<b>TOTAL:</b>	<b>\$ 74.85</b>

WHEREFORE, Appellant respectfully requests that the Court award attorneys' fees and expenses in the total amount of **\$37,717.64**

Respectfully submitted,

/s/ Maureen Siedor  
**Maureen E. Siedor, Esq.**

Counsel for Appellant

## **EXHIBIT A**



**STAFF HOURS**  
**Marshall Newman v. Denis McDonough, 18-2015**

**CERTIFICATION**

I have reviewed the combined billing statements and I am satisfied that it accurately reflects the work performed by all counsel and paralegal and I have considered and eliminated all time that is excessive or redundant.

Date:           October 12, 2022

/s/ Maureen E. Siedor  
Maureen E. Siedor, Esq.

Date	Hours	Attorney	Description
<b>Rose Goldberg's Hours</b>			
8/15/2018	4	Goldberg, Rose	RBA Review.
8/15/2018	0.25	Goldberg, Rose	TC with client and client's brother
8/22/2018	3.5	Goldberg, Rose	RBA Review.
8/23/2018	1.25	Goldberg, Rose	RBA Review.
8/28/2018	0.25	Goldberg, Rose	TC with client to discuss terms of retainer and next steps in case.
9/6/2018	0.25	Goldberg, Rose	Filed notice of appearance, locked retainer, and motion to withdraw for Judy Donegan (Consortium).
9/17/2018	1.75	Goldberg, Rose	RBA Review.
9/20/2018	2	Goldberg, Rose	RBA Review.
9/21/2018	4	Goldberg, Rose	RBA Review.
10/5/2018	2	Goldberg, Rose	Preliminary review of case law for Conference memo, covering failure to consider favorable evidence, unsubstantiated medical opinions, and the insanity standard.
10/23/2018	0.5	Goldberg, Rose	Drafted and filed motion to reschedule Rule 33 Conference.
10/25/2018	0.25	Goldberg, Rose	TC with client about Rule 33 Conference.
11/13/2018	0.25	Goldberg, Rose	TC with client. Updated client on timing of Rule 33 Conference and what Conference conversation will consist of.
12/10/2018	0.5	Goldberg, Rose	Review case law on burden of proof for CODs and insanity.
12/10/2018	0.5	Goldberg, Rose	Review case law on unsubstantiated medical opinions.
12/11/2018	0.5	Goldberg, Rose	Review case law on duty to assist and exams.
12/13/2018	2	Goldberg, Rose	Draft Conference memo sections on burden of proof for insanity and failure to address favorable evidence.

12/14/2018	0.1 Goldberg, Rose	Draft certificate of service for Rule 33 Conference memo.
12/16/2018	0.5 Goldberg, Rose	Review case law on compliance with remand instructions.
12/17/2018	0.1 Goldberg, Rose	Review VA OGC Precedential Opinion on insanity. Draft Conference memo sections on duty assist, unsubstantiated medical opinions, and remand compliance.
12/17/2018	2.5 Goldberg, Rose	Draft Conference memo sections on failure to address attempted housebreaking's relevance to insanity and multiple duty to assist errors.
12/17/2018	1.5 Goldberg, Rose	
12/17/2018	0.1 Goldberg, Rose	Compile RBA pages cited to append to Conference memo. Edit Conference memo to refine arguments and make more persuasive.
12/19/2018	0.25 Goldberg, Rose	Email Conference memo to VA and CLS and file certificate of service.
12/19/2018	0.1 Goldberg, Rose	TC with client.
12/20/2018	0.2 Goldberg, Rose	
1/2/2019	2 Goldberg, Rose	Preparation for Rule 33 Conference. Review Conference memo, relevant case law, and prepare questions for VA.
1/3/2019	0.5 Goldberg, Rose	Participate in Rule 33 Conference.
1/3/2019	1 Goldberg, Rose	TC with client. Review case law on scope of Court's remand powers (Mahl, Best, Quirin line of cases).
1/4/2019	0.2 Goldberg, Rose	Email to VA counsel Mark Villapando rejecting remand offer.
1/4/2019	0.1 Goldberg, Rose	
1/9/2019	0.1 Goldberg, Rose	Email to VA counsel Mark Villapando asking for his position on request for extension of initial brief deadline.
1/14/2019	0.1 Goldberg, Rose	Draft and file motion for extension of initial brief deadline. TC with client to report filed for briefing extension and discuss next steps.
1/14/2019	0.1 Goldberg, Rose	

2/5/2019	0.2 Goldberg, Rose	Draft initial brief cover page, statement issues, statement case, and started statement facts.
2/19/2019	2.5 Goldberg, Rose	Draft statement of facts and outline argument sections.
3/3/2019	3.5 Goldberg, Rose	Finish drafting facts; draft procedural history and conclusion.
3/4/2019	0.2 Goldberg, Rose	Draft summary of arguments.
3/4/2019	2.5 Goldberg, Rose	Review case law and statutes relevant to burden proof for insanity and started drafting arguments.
3/5/2019	0.3 Goldberg, Rose	Review additional cases on burden of proof for insanity and Character of Discharges generally.
3/5/2019	2 Goldberg, Rose	Finish drafting insanity arguments.
3/6/2019	0.5 Goldberg, Rose	Review case law on what qualifies as mental health symptoms.
3/6/2019	2 Goldberg, Rose	Draft brief section on failure to consider favorable evidence of mental health conditions in military records.
3/9/2019	2 Goldberg, Rose	Review VA OGC Precedential Opinion on insanity and associated cases (.5 hr); draft brief section on VA's failure to consider client's housebreaking's relevance to insanity (1 hr); draft brief section on unsubstantiated medical opinion (.5 hr)
3/9/2019	1.5 Goldberg, Rose	Review statutes and case law on duty to assist (duty to order an exam; duty to attempt to obtain private records, SSA records, and court-martial transcripts).
3/9/2019	3 Goldberg, Rose	Draft brief section on duty to assist (intro and four subsections).
3/10/2019	2 Goldberg, Rose	Finish drafting court martial transcript section (.2 hr.); review key remand compliance cases (.5 hr.); draft Stegall violation section (1 hr.); draft conclusion (.1 hr.).
3/11/2019	0.4 Goldberg, Rose	Review CUE regulations and case law for interpretation of Robertson COD case (.2 hr.); draft section on Robertson case (.2 hr.).

3/11/2019	0.3	Goldberg, Rose	Create Table of Contents and Table of Authorities
3/12/2019	3.5	Goldberg, Rose	Finalize statement of issues, statement of case (namely, facts and procedural history), argument summary, insanity arguments.
3/13/2019	3	Goldberg, Rose	Finalize housebreaking section of brief, all duty to assist sections, and Stegall remand compliance section.
3/13/2019	0.2	Goldberg, Rose	Review procedures/strategies for requesting published decision/panel review.
3/14/2019	0.5	Goldberg, Rose	Edit brief draft based on suggestions from Senior Staff Attorney Barbara Saavedra.
3/15/2019	2	Goldberg, Rose	Created RBA part of Table of Authorities
3/17/2019	3	Goldberg, Rose	Full proof and full edit of brief.
3/18/2019	0.1	Goldberg, Rose	TC with client
3/19/2019	0.2	Goldberg, Rose	Added appendix to brief, reordered RBA TOA, filed brief.
3/29/2019	0.2	Goldberg, Rose	TC with client. Discussed arguments in brief filed and next steps in case.
4/22/2019	0.75	Goldberg, Rose	Transfer meeting with Barbara.

**Rose Goldberg's Total**

**Hours: 69.55**

**Barbara Saavedra's**

**Hours**

4/22/2019	0.75	Saavedra, Barbara	Transfer meeting with Rose.
5/1/2019	3	Saavedra, Barbara	Reviewed Rose's brief, portions of the RBA, and read cases cited in briefs
5/2/2019	2	Saavedra, Barbara	Reviewed case materials, and case law cited in the brief and BVA decision
5/7/2019	1.25	Saavedra, Barbara	Prepared appearance; set up CAVC filing system on computer; filed appearance
5/16/2019	0.1	Saavedra, Barbara	Emailed with VA counsel regarding their request for additional time to file Appellee's brief

6/21/2019	2 Saavedra, Barbara	Met with Maureen Siedor regarding case; prepared and filed withdrawal
<b>Barbara Saavedra's</b>		
<b>Total Hours</b>	<b>9.1</b>	
<b>Maureen Siedor's</b>		
<b>Hours</b>		
6/21/2019	2 Siedor, Maureen	Met with Barbara Saavedra regarding case; set up CAVC filing system on laptop; prepared and filed appearance
6/24/2019	1 Siedor, Maureen	Review Rose's brief; read case law cited in brief
6/25/2019	1.5 Siedor, Maureen	Reviewed BVA decision, and portions of RBA
6/26/2019	3.5 Siedor, Maureen	Reviewed Appellee's brief; pulled and reviewed case law cited therein; phone call with client
9/7/2019	1 Siedor, Maureen	Reviewed briefs, and more case law; began outlining reply brief argument
9/8/2019	1.5 Siedor, Maureen	Drafted reply brief
9/14/2019	2.5 Siedor, Maureen	Drafted reply brief
9/21/2019	1 Siedor, Maureen	Drafted reply brief
9/22/2019	1.5 Siedor, Maureen	Finalized first draft of brief; emailed to mentor attorney
10/12/2019	4 Siedor, Maureen	Additional case law research and review; edits to reply brief
10/13/2019	3 Siedor, Maureen	Continued drafting reply brief
10/14/2019	4.5 Siedor, Maureen	Finalized reply brief, and filed
11/22/2019	0.1 Siedor, Maureen	Emailed with Appellee's counsel
4/9/2020	0.2 Siedor, Maureen	Received word of client's passing; emailed mentor attorney
4/10/2020	0.5 Siedor, Maureen	Researched accrued benefits; tried contacting client's brother but disconnected phone; telephone call with funeral home listed to obtain client's brother's contact info
4/12/2021	0.1 Siedor, Maureen	Tried calling brother again

4/13/2021	0.5 Siedor, Maureen	Tried calling brother again; messaged other family members via social media sites; drafted letter to client's brother and sent via certified mail
4/13/2021	0.1 Siedor, Maureen	Tried calling brother again
4/13/2021	0.5 Siedor, Maureen	Drafted second letter to brother; sent via cert mail
4/26/2021	0.1 Siedor, Maureen	Tried calling brother
4/29/2021	0.6 Siedor, Maureen	Telephone call with client's brother
5/3/2021	0.5 Siedor, Maureen	Emailed Appellee's counsel re client's passing; Drafted substitution paperwork and filed with VA regional office in South Carolina via certified mail
5/5/2021	0.1 Siedor, Maureen	Emailed with VA employees regarding substitution denial due to lack of pending claim; explained case is before the Court
5/10/2021	0.8 Siedor, Maureen	Drafted substitution motion; sent to mentor attorney for her review
5/11/2021	0.2 Siedor, Maureen	Finalized substitution motion and filed
7/19/2021	0.1 Siedor, Maureen	Read Appellee's reply to substitution motion
9/15/2021	1.8 Siedor, Maureen	TC with mentor attorney re oral arguments; reviewed examples of oral arguments in preparation
9/22/2021	4 Siedor, Maureen	Reviewed briefing; began to draft oral argument opening
9/25/2021	6 Siedor, Maureen	Drafted oral argument opening; reviewed case law
9/27/2021	4.8 Siedor, Maureen	Moot of oral arguments; revised presentation based on feedback
10/10/2021	1.8 Siedor, Maureen	Revising opening for oral arguments
10/15/2021	3.5 Siedor, Maureen	Emailed with Appellee's counsel; tried to contact Appellant; continued to prepared for oral arguments
10/11/2021	5 Siedor, Maureen	Prepared response for oral arguments
10/12/2021	3 Siedor, Maureen	Prepared mock questions and responses for oral arguments
10/13/2021	1.5 Siedor, Maureen	Reviewed opening argument
10/14/2021	3.2 Siedor, Maureen	Continued to revise oral argument presentation

10/15/2021	0.1 Siedor, Maureen	Phone call with Appellee's counsel regarding change of position; prep for oral arguments
10/19/2021	2.8 Siedor, Maureen	Tried to contact Appellant; emailed with Appellee's counsel; continued to work on opening argument; read Appellee's change in position; emailed mentor attorney
10/25/2021	3.4 Siedor, Maureen	Wrote motion to reply and reply to Appellee's change in position; emailed with Appellee's counsel Reviewed filing and made final edits; filed Motion and Reply to Appellee's change in position; phone call with mentor attorney
10/29/2021	1.5 Siedor, Maureen	Phone call with client
10/30/2021	0.3 Siedor, Maureen	Phone call with client
12/17/2021	0.2 Siedor, Maureen	Read the Court's decision; phone call with client to explain outcome.
6/22/2022	0.8 Siedor, Maureen	

**Maureen Siedor's Total Hours**

**75.1**

**Rebecca Beville's Hours**

10/13/2021	3.1 Beville, Rebecca	Prepared binders of filings & case law in prep for oral argument
10/14/2021	2.5 Beville, Rebecca	Prepared binders of case law
10/15/2021	0.2 Beville, Rebecca	Mailed binders to attorney

**Rebecca Beville's Total Hours**

**5.8**



## **EXHIBIT B**



## Databases, Tables &amp; Calculators by Subject

Change Output Options: From: 1996 ▼ To: 2022 ▼ ☐ include graphs ☐ include annual averages[More Formatting Options](#) 

Data extracted on: October 12, 2022 (2:48:35 PM)

## CPI for All Urban Consumers (CPI-U)

Series Id: CUURS49BSA0, CUUSS49BSA0

Not Seasonally Adjusted

Series Title: All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted

Area: San Francisco-Oakland-Hayward, CA

Item: All items

Base Period: 1982-84=100

Download:  [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1996	152.9	153.2	152.9	153.9	155.1	155.2	155.9	155.6	156.3	156.9	156.9	156.0	155.1	153.9	156.3
1997	157.0	157.9	159.2	159.6	159.8	160.0	160.6	161.2	161.6	162.5	162.6	162.6	160.4	158.9	161.9
1998		163.2		164.6		165.5		166.6		167.2		167.4	165.5	164.2	166.9
1999		169.4		172.2		171.8		173.5		175.2		174.5	172.5	170.8	174.2
2000		176.5		178.7		179.1		181.7		183.4		184.1	180.2	177.7	182.6
2001		187.9		189.1		190.9		191.0		191.7		190.6	189.9	188.7	191.1
2002		191.3		193.0		193.2		193.5		194.3		193.2	193.0	192.3	193.7
2003		197.7		197.3		196.3		196.3		196.3		195.3	196.4	196.8	196.1
2004		198.1		198.3		199.0		198.7		200.3		199.5	198.8	198.2	199.5
2005		201.2		202.5		201.2		203.0		205.9		203.4	202.7	201.5	203.9
2006		207.1		208.9		209.1		210.7		211.0		210.4	209.2	207.9	210.6
2007		213.688		215.842		216.123		216.240		217.949		218.485	216.048	214.736	217.361
2008		219.612		222.074		225.181		225.411		225.824		218.528	222.767	221.730	223.804
2009		222.166		223.854		225.692		225.801		226.051		224.239	224.395	223.305	225.484
2010		226.145		227.697		228.110		227.954		228.107		227.658	227.469	226.994	227.944
2011		229.981		234.121		233.646		234.608		235.331		234.327	233.390	232.082	234.698
2012		236.880		238.985		239.806		241.170		242.834		239.533	239.650	238.099	241.201
2013		242.677		244.675		245.935		246.072		246.617		245.711	245.023	243.894	246.152
2014		248.615		251.495		253.317		253.354		254.503		252.273	251.985	250.507	253.463
2015		254.910		257.622		259.117		259.917		261.019		260.289	258.572	256.723	260.421
2016		262.600		264.565		266.041		267.853		270.306		269.483	266.344	263.911	268.777
2017		271.626		274.589		275.304		275.893		277.570		277.414	274.924	273.306	276.542
2018		281.308		283.422		286.062		287.664		289.673		289.896	285.550	282.666	288.435
2019		291.227		294.801		295.259		295.490		298.443		297.007	295.004	293.150	296.859
2020		299.690		298.074		300.032		300.182		301.736		302.948	300.084	299.109	301.059
2021		304.387		309.419		309.497		311.167		313.265		315.805	309.721	306.724	312.718
2022		320.195		324.878		330.539		328.871						323.408	

## **EXHIBIT C**

**LAFHEY MATRIX – 2003-2012**  
**(2009-10 rates were unchanged from 2008-09 rates)**

	Years (Rate for June 1 - May 31, based on prior year's CPI-U)								
Experience	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12
20+ years	380	390	405	425	440	465	465	475	495
11-19 years	335	345	360	375	390	410	410	420	435
8-10 years	270	280	290	305	315	330	330	335	350
4-7 years	220	225	235	245	255	270	270	275	285
1-3 years	180	185	195	205	215	225	225	230	240
Paralegals & Law Clerks	105	110	115	120	125	130	130	135	140

*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. The matrix is intended to be used 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 does **not** apply in cases in which the hourly rate is limited by statute. See 28 U.S.C. § 2412(d).
2. This matrix is based on the hourly rates allowed by the District Court 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). It is commonly referred to by attorneys and federal judges in the District of Columbia as the "Laffey Matrix" or the "United States Attorney's Office Matrix." The column headed "Experience" refers to the years following the attorney's graduation from law school. The various "brackets" are intended to correspond to "junior associates" (1-3 years after law school graduation), "senior associates" (4-7 years), "experienced federal court litigators" (8-10 and 11-19 years), and "very experienced federal court litigators" (20 years or more). See *Laffey*, 572 F. Supp. at 371.
3. The hourly rates approved by the District Court in *Laffey* were for work done principally in 1981-82. The Matrix begins with those rates. See *Laffey*, 572 F. Supp. at 371 (attorney rates) & 386 n.74 (paralegal and law clerk rate). The rates for subsequent yearly periods were determined by adding the change in the cost of living for the Washington, D.C. area to the applicable rate for the prior year, and then rounding to the nearest multiple of \$5 (up if within \$3 of the next multiple of \$5). The result is subject to adjustment if appropriate to ensure that the relationship between the highest rate and the lower rates remains reasonably constant. Changes in the cost of living are measured by the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.
4. Use of an updated *Laffey* Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the United States Attorney's Office as evidence of prevailing market rates for litigation counsel in the Washington, D.C. area. See *Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n. 14, 1109 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996). Lower federal courts in the District of Columbia have used this updated *Laffey* Matrix when determining whether fee awards under fee-shifting statutes are reasonable. See, e.g., *Blackman v. District of Columbia*, 59 F. Supp. 2d 37, 43 (D.D.C. 1999); *Jefferson v. Milvets System Technology, Inc.*, 986 F. Supp. 6, 11 (D.D.C. 1997); *Ralph Hoar & Associates v. Nat'l Highway Transportation Safety Admin.*, 985 F. Supp. 1, 9-10 n.3 (D.D.C. 1997); *Marini v. Fed. Nat'l Mtg Ass'n*, 977 F. Supp. 482, 485 n.2 (D.D.C. 1997); *Park v. Howard University*, 881 F. Supp. 653, 654 (D.D.C. 1995).