

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

ROGER W. WIKER)	
Appellant,)	
)	
v.)	CAVC No. 21-5454
)	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 **\$39,754.57**.

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, in a precedential decision, the Court reversed the Board's finding that the January 1965 rating decision became final and set aside and remanded the Board's July 1, 2021 decision for the Board to assign an effective date based on the 1964 claim. See pages 1-14 of the Decision. Judgment entered on June 5, 2023. 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. Wiker 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. Wiker is a person eligible to receive an award under the EAJA.

C. The Position of the Secretary Was Not Substantially Justified

In *White v. Nicholson*, 412 F.3d 1314 (Fed. Cir. 2004) the Federal Circuit applied the totality of the circumstances test and noted that "EAJA requires that the record must supply the evidence of the Government's substantial justification." 412 F.3d at 1316. The Secretary's position during proceedings before the Agency or the Court was not reasonable, either in law or in fact, and accordingly the

Secretary's position was not substantially justified at either the administrative or litigation stage in this case. The Court reversed the Board's finding that the January 1965 rating decision became final and set aside and remanded the Board's July 1, 2021 decision for the Board to assign an effective date based on the 1964 claim. 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 *Elczynyn*, 7 Vet. App. at 176-177).¹

Six attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Shawn Wright, Emma Peterson, Amy Odom, David Giza, Danielle M. Gorini, and Zachary Stolz.² Attorney Shawn Wright graduated from University of

¹ The attorneys' fees are calculated using *Speigner v. Wilkie*, 31 Vet. App. 42 (2019), wherein this Court held that the Consumer Price Index- U of the location of the residence of the attorney must be used.

² "There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the

Miami Law School in 2019 and the *Laffey* Matrix establishes that \$413.00 is the prevailing market rate for an attorney with his experience. Emma Peterson graduated from Roger Williams University Law School in 2011 and the *Laffey* Matrix establishes that \$829.00 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 \$829.00 is the prevailing market rate for an attorney with her experience. David Giza graduated from Boston University Law School in 2018 and the *Laffey* Matrix establishes that \$508.00 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*

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 the work is common today for both plaintiff and defense work.” *Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) *holding modified by Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). “Careful preparation often requires collaboration and rehearsal[.]” *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998). As demonstrated in Exhibit A, each attorney involved in the present case provided a distinct, and non-duplicative contribution to the success of the appeal. *See Baldridge*, 19 Vet.App. at 237 (“An application for fees under EAJA where multiple attorneys are involved must also explain the role of each lawyer in the litigation and the tasks assigned to each, thereby describing the distinct contribution of each counsel.”).

Matrix establishes that \$829.00 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 \$829.00 is the prevailing market rate for an attorney with his experience.

Avarie Manfredi and Geoffery LaForce are paralegals 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 is \$180.00 per hour. Therefore, Appellant seeks fees at the rate of \$180.00 per hour for representation services before the Court for the paralegals.³

³ 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

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$232.60 per hour for Mr. Wright, Ms. Peterson, Ms. Gorini and Mr. Stolz for representation services before the Court.⁴ This rate per hour, multiplied by the number of hours billed for these four attorneys (9.70) results in a total attorneys' fee amount of \$2,256.22

Appellant seeks attorneys' fees at the rate of \$227.70 per hour for Mr. Giza's and Ms. Odom's representation services before the Court.⁵ This rate per hour, multiplied by the number of hours billed (149.30) results in a total attorneys' fee

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).

⁴ This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. *See Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to May 2022 the chosen mid-point date for the litigation in this case, using the method described in *Elcyszyn v. Brown*, 7 Vet. App. 170, 181 (1994).

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 May 2022 the chosen mid-point date for the litigation in this case, using the method described in *Elcyszyn v. Brown*, 7 Vet. App. 170, 181 (1994).

amount of \$33,995.61.

Appellant seeks fees at the rate of \$180.00 per hour for the paralegals' representation services before the Court. This rate per hour, multiplied by the number of hours billed (6.90) results in a total fee amount of \$1,242.00.

In addition, Appellant seeks reimbursement for the following expenses:

Amy Odom:

Airfare: \$466.40

Rental Car: \$393.39

Hotel: \$471.64

Lyft: \$29.99

David Giza:

Airfare: \$427.68

Hotel: \$471.64

Based upon the foregoing, the total fee sought is **\$39,754.57**.

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,
Roger W. Wiker
By His Attorneys,
CHISHOLM CHISHOLM & KILPATRICK
/s/Zachary M. Stolz
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Providence, Rhode Island 02903
(401) 331-6300
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Exhibit A**Time from 01/01/1900 to 07/06/2023****Case No. 681738****Client: Roger W. Wiker**

			<u>Hours</u>
7/27/2021	Emma Peterson	*Attorney Reviewed Board Decision, researched caselaw, recommended an appeal to CAVC, and proposed legal arguments.	0.60
8/17/2021	Shawn Wright	*Attorney Reviewed documents for CAVC appeal. Ensured consistency and accuracy. Submitted documents for CAVC appeal.	0.10
8/24/2021	Shawn Wright	*Attorney Reviewed docket to ensure appeal had been processed. Updated client file	0.10
8/30/2021	David Giza	*Attorney Prepared and e-filed notice of appearance as co-counsel. Reviewed docket. Updated client file.	0.20
9/14/2021	David Giza	*Attorney Received BVA decision transmittal. Reviewed for accuracy, saved, and updated client file.	0.10
10/4/2021	David Giza	*Attorney Received and reviewed notice of appearance for OGC. Updated client file.	0.10
10/15/2021	David Giza	*Attorney Received and reviewed notice of RBA receipt and upload. Updated client file.	0.10
10/18/2021	David Giza	*Attorney Received and reviewed notice of OGC e-filing RBA transmittal notice with Court. Updated client file.	0.10
10/19/2021	Manfredi Avarie	*Paralegal RBA Review, R-1-1515	1.10
10/20/2021	Manfredi Avarie	*Paralegal RBA Review, R-3390-4850 (end).	0.50

Exhibit A

10/20/2021	Manfredi Avarie	*Paralegal RBA Review, R-1516-3389	1.00
11/2/2021	David Giza	*Attorney Prepared RBA status letter to client	0.10
11/10/2021	David Giza	*Attorney Received and reviewed notice to file brief, saved, calculated brief due date, and updated client file.	0.10
12/3/2021	David Giza	*Attorney Received and reviewed PBC order, saved, calculated memo due date, and updated client file.	0.10
12/9/2021	LaForce Geoffery	*Paralegal Reviewed RBA for dispute purposes and PBC factual development; pp. 1-188	0.10
12/9/2021	LaForce Geoffery	*Paralegal Reviewed RBA for dispute purposes and PBC factual development; reviewed for substance. pp. 189-1027	0.90
12/9/2021	LaForce Geoffery	*Paralegal Reviewed RBA for dispute purposes and PBC factual development; reviewed for substance. pp. 1028-2116	0.90
12/9/2021	LaForce Geoffery	*Paralegal Reviewed RBA for dispute purposes and PBC factual development; reviewed for substance. pp. 2117-3279	0.90
12/10/2021	LaForce Geoffery	*Paralegal Reviewed RBA for dispute purposes and PBC factual development; reviewed for substance. pp. 4180-4850	0.80
12/10/2021	LaForce Geoffery	*Paralegal Reviewed RBA for dispute purposes and PBC factual development; reviewed for substance. pp. 3280-4179	0.70
12/15/2021	David Giza	*Attorney Reviewed case notes to assess issues on appeal and scope of appeal. Updated client file.	0.20
1/21/2022	David Giza	*Attorney Reviewed Board decision, casemap, RBA, and case notes to assess issues and arguments on appeal.	1.70

Exhibit A

2/14/2022	David Giza	*Attorney Continued drafting PBC memo.	0.50
2/14/2022	David Giza	*Attorney Drafted outline of arguments for PBC memo. Began drafting PBC memo.	2.80
2/15/2022	David Giza	*Attorney Reviewed and revised PBC memo for grammar and argument flow. Extracted the relevant pages from the RBA. Redacted confidential information. Sent email to OGC & CLS with PBC memo and the relevant RBA pages. Prepared and e-	0.90
2/15/2022	David Giza	*Attorney Finished draft of PBC memo.	1.10
3/1/2022	David Giza	*Attorney Participated in telephonic briefing conference with OGC and CLS. Updated client file.	0.40
3/1/2022	David Giza	*Attorney Reviewed Board decision and PBC memo in anticipation of telephonic PBC later this morning.	0.20
3/1/2022	Amy Odom	*Attorney Reviewed remand offer; prepared memo regarding same.	0.20
3/4/2022	David Giza	*Attorney Received and reviewed email from client. Reviewed case notes to address questions in email. Called client to discuss questions, no answer, left voicemail. Updated client file.	0.30
3/7/2022	David Giza	*Attorney Spoke with client. Discussed PBC and OGC's remand offer. Updated client file.	0.20
3/8/2022	David Giza	*Attorney Discussed opening brief strategy and arguments at litigation strategy meeting.	0.10
3/8/2022	David Giza	*Attorney Reviewed notes from conference, BVA decision and relevant RBA records and added note to file in preparation of lit strat meeting.	0.30
3/8/2022	Amy Odom	*Attorney Participated in litigation strategy meeting.	0.10

Exhibit A

3/11/2022	David Giza	*Attorney Emailed OGC to inform them that client does not want to accept current remand offer. Updated client file.	0.20
5/2/2022	David Giza	*Attorney Began reviewed Board decision, case notes, and PBC memo to outline arguments for opening brief. Started drafting opening brief.	2.60
5/3/2022	David Giza	*Attorney Continued working on draft of opening brief.	0.50
5/4/2022	David Giza	*Attorney Continued working on draft of opening brief.	0.90
5/4/2022	David Giza	*Attorney Continued working on draft of opening brief.	3.00
5/5/2022	David Giza	*Attorney Continued working on draft of opening brief.	1.80
5/5/2022	David Giza	*Attorney Continued working on draft of opening brief.	3.00
5/6/2022	David Giza	*Attorney Finished draft of opening brief. Proof read entire brief. Sent to AODOM for review.	2.00
5/6/2022	David Giza	*Attorney Continued working on draft of opening brief.	3.00
5/6/2022	Amy Odom	*Attorney Began researching "reasonable person" standard employed by Board.	1.20
5/6/2022	David Giza	*Attorney Continued working on first draft of opening brief.	3.00
5/13/2022	David Giza	*Attorney Researched citation and language of 1964 and 1965 versions of notice of disagreement statute and regulation.	0.30

Exhibit A

5/13/2022	Amy Odom	*Attorney Reviewed statement of facts and notice arguments; reviewed and analyzed pertinent portions of RBA.	3.00
5/13/2022	Amy Odom	*Attorney Conducted legal research and drafted additional subsectoins for notice arguments.	3.00
5/14/2022	Amy Odom	*Attorney Finished additions to notice argument; reviewed and edited NOD and reversal arguments.	1.90
5/16/2022	David Giza	*Attorney Received, reviewed, and began implementing AODOM's edits into revised draft opening brief.	3.00
5/16/2022	David Giza	*Attorney Made final revisions to opening brief. Checked citations to record and authorities. E-filed.	0.80
5/16/2022	David Giza	*Attorney Received, reviewed, and incorporated AODOM's additional edits into draft opening brief.	0.30
5/16/2022	Amy Odom	*Attorney Reviewed and edited revised draft of brief.	0.80
5/16/2022	David Giza	*Attorney Finished revised draft of opening brief. Sent to AODOM for review.	0.80
5/16/2022	Amy Odom	*Attorney Prepared and filed notice of appearance; updated file.	0.20
7/15/2022	David Giza	*Attorney Received and reviewed notice of OGC e-filing motion to extend time for them to file their brief. Updated client file.	0.10
7/15/2022	David Giza	*Attorney Received, reviewed, and responded to OGC's request for non-opposition to them taking a 45 day extension on their brief. Updated client file.	0.10
8/29/2022	David Giza	*Attorney Received and reviewed notice of OGC e-filing their brief. Reviewed OGC's brief, drafted notes regarding initial thoughts for reply arguments.	1.00

Exhibit A

8/31/2022	David Giza	*Attorney Spoke with client about OGC's brief, answered his questions regarding same and thoughts regarding reply arguments. Discussed likely timeline remaining on appeal. Updated client file.	0.20
9/6/2022	David Giza	*Attorney Reviewed Board decision, case notes, opening brief, and OGC's brief in anticipation of litigation strategy meeting about reply brief arguments later this afternoon. Updated client file.	0.40
9/6/2022	Amy Odom	*Attorney Reviewed VA's brief; prepared notes in advance of litigation strategy meeting.	0.50
9/6/2022	David Giza	*Attorney Discussed issues on appeal and reply brief arguments at litigation strategy meeting. Updated client file.	0.10
9/6/2022	Amy Odom	*Attorney Participated in litigation strategy meeting.	0.20
9/28/2022	David Giza	*Attorney Began reviewing AODOM's additional comments on OGC's brief.	0.10
10/12/2022	David Giza	*Attorney Finished reviewing AODOM's notes on OGC's brief, outlined arguments for reply brief. Updated client file.	1.80
10/13/2022	David Giza	*Attorney Continued working on draft of reply brief.	2.10
10/17/2022	David Giza	*Attorney Continued working on draft of reply brief.	1.30
10/17/2022	David Giza	*Attorney Continued working on draft of reply brief.	3.00
10/18/2022	David Giza	*Attorney Finished and proofread draft of reply brief. Sent to AODOM for review.	0.60
10/18/2022	David Giza	*Attorney Continued working on draft of reply brief.	3.00

Exhibit A

10/25/2022	Amy Odom	*Attorney Reviewed and edited draft of reply brief; provided legal advice to D. Giza regarding same.	1.20
10/26/2022	David Giza	*Attorney Continued revising reply brief. Sent to AODOM for review. Updated client file.	0.80
10/26/2022	David Giza	*Attorney Received, reviewed, and began incorporating AODOM's edits on first draft reply brief into revised draft. Updated client file.	3.00
10/27/2022	David Giza	*Attorney Revised reply brief accordingly. Gathered relevant old versions of regulations and statutes to attach to reply brief.	1.40
10/27/2022	David Giza	*Attorney Reviewed and implemented proofreader edits where appropriate. Made final revisions to reply brief. Checked citations to record and authorities. E-filed.	0.90
10/27/2022	Amy Odom	*Attorney Conference with David regarding edits to reply brief.	0.30
11/9/2022	David Giza	*Attorney Received notice of record of proceedings being e-filed. Reviewed record of proceedings for completeness. Prepared and e-filed response to record of proceedings. Updated client file.	0.60
11/14/2022	David Giza	*Attorney Received and reviewed notice of case being assigned to Judge Falvey at the CAVC. Updated client file.	0.10
12/16/2022	Amy Odom	*Attorney Received and reviewed panel order; prepared memo regarding same.	0.20
1/19/2023	David Giza	*Attorney Received and reviewed notice of Judge Allen being substituted for Chief Judge Bartley on upcoming oral argument panel. Updated client file.	0.10
1/31/2023	David Giza	*Attorney Received and reviewed oral argument scheduling order. Updated client file accordingly.	0.10
2/9/2023	David Giza	*Attorney Spoke with client regarding current status of appeal. Updated client file.	0.30

Exhibit A

2/9/2023	David Giza	*Attorney Called client to check in and inform him of upcoming oral arguments, no answer, left explanatory voicemail. Updated client file.	0.10
2/9/2023	David Giza	*Attorney Reviewed pleadings to begin preparing notes and outlines for upcoming oral argument discussion and practice. Updated client file.	2.00
2/21/2023	David Giza	*Attorney Emailed OGC one final time to confirm position regarding defending on remand in anticipation of upcoming oral arguments on 3/16. Updated client file.	0.10
2/23/2023	David Giza	*Attorney Received, reviewed, and discussed CAVC's order regarding additional issues for oral argument with AODOM and ZACH. Updated client file.	0.20
2/24/2023	Amy Odom	*Attorney Reviewed briefs; research regarding NOD argument and Court's order regarding issues to discuss during oral argument.	0.50
2/27/2023	Amy Odom	*Attorney Continued legal research regarding 19.110	1.20
2/27/2023	Amy Odom	*Attorney Conducted legal research regarding 19.110 and conference with David regarding same; prepared notes.	2.20
2/27/2023	David Giza	*Attorney Discussed issues regarding CAVC's order regarding additional potentially relevant regulations with AODOM. Researched legislative history of 19.110 and relevant caselaw. Updated client file.	1.50
2/28/2023	Amy Odom	*Attorney Emailed Clerk of Court G. Block regarding process for obtaining copies of pleadings in Parham v. West; updated file.	0.20
2/28/2023	David Giza	*Attorney Conducted additional research regarding client's appellate rights and relevant regulations addressing knowledge of such from 1964. Updated client file.	0.20
3/1/2023	Amy Odom	*Attorney Participated in oral argument walkthrough and conference with oral argument team regarding same.	1.40
3/1/2023	David Giza	*Attorney Reviewed Board decision and relevant RBA pages regarding procedural history of the case in anticipation of upcoming oral argument strategy meeting. Updated client file.	1.00

Exhibit A

3/1/2023	David Giza	*Attorney Participated in oral argument strategy session. Discussed strength and weaknesses of our arguments, structure and order of oral arguments, and likely VA arguments. Updated client file.	1.20
3/1/2023	Zachary Stolz	*Attorney Reviewed record and pleadings in preparation for walk through or oral argument strategy with team. Reviewed most important cited cases. Participated in walk through.	3.00
3/1/2023	Amy Odom	*Attorney Reviewed and analyzed BVA decision, parties' briefs, and pertinent portions of RBA in preparation for oral argument walkthrough; prepared notes for same.	2.80
3/2/2023	David Giza	*Attorney Called client to discuss facts regarding denial of claim in 1965. Memo to the file.	0.60
3/6/2023	Amy Odom	*Attorney Drafted oral argument introduction script and outline of arguments regarding notice.	1.70
3/6/2023	Amy Odom	*Attorney Reseached case law regarding AG v. Peake, Cook v. Principi, and listened to AG v. Peake oral argument in preparation for moot argument.	3.00
3/7/2023	Amy Odom	*Attorney Research regarding Mayfield and Cowan; practiced and revised oral argument intro and outline.	0.80
3/8/2023	Amy Odom	*Attorney Pre-moot conference with oral argument team	0.80
3/8/2023	David Giza	*Attorney Reviewed OGC's brief, RBA, and case notes to outline arguments for playing OGC at moot oral argument.	1.90
3/8/2023	Amy Odom	*Attorney Reviewed and analyzed constitutional due process case law in preparation for moot argument; prepared notes regarding same.	2.60
3/8/2023	David Giza	*Attorney Participated in moot oral arguments, presented arguments as VA. Discussed structure and presentation of our oral arguments afterwards. Updated client file.	1.30
3/8/2023	Zachary Stolz	*Attorney Prepared for and participated as "judge" in moot court. Preparation included review of pleadings and caselaw. Participated by asking questions and oral argument strategy.	3.00

Exhibit A

3/8/2023	Amy Odom	*Attorney Participated in moot argument and post-moot conference.	1.00
3/12/2023	Amy Odom	*Attorney Reviewed and analyzed ROP; prepared timeline of events in preparation for oral argument.	3.00
3/12/2023	Amy Odom	*Attorney Conducted legal research, including reviewing and analyzing Jaurez v. Peake.	1.50
3/13/2023	David Giza	*Attorney Participated in second moot arguments.	1.50
3/13/2023	Amy Odom	*Attorney Researched cases regarding abandonment under 3.158; studied timeline of events and pertinent portions of RBA in preparation for moot	3.00
3/13/2023	Amy Odom	*Attorney Participated in pre-moot conference, moot, and post-moot conference.	2.00
3/13/2023	David Giza	*Attorney Reviewed OGC's brief, notes on same, and relevant RBA and ROP pages in anticipation of playing VA in upcoming second moot/mock oral arguments. Updated client file.	0.40
3/14/2023	Amy Odom	Reviewed oral argument materials; prepared binders for oral argument; reviewed and organized materials in binders.	3.00
3/14/2023	Amy Odom	Legal research regarding procedural due process in preparation for oral argument.	2.50
3/15/2023	Amy Odom	Reviewed and analyzed Tablazon, PVA v. Secretary, and Mullane v. Hanover Bank in preparation for oral argument; read law review articles about procedural due process and notice.	1.50
3/15/2023	Amy Odom	Travelled to Ithaca, NY for oral argument.	9.00
3/15/2023	David Giza	Traveled to Ithaca, New York to participate in oral arguments.	7.00

Exhibit A

3/16/2023	Amy Odom	Participated in pre-oral argument conference; participated in oral argument; conferences with David Giza regarding same.	3.00
3/16/2023	David Giza	Participated in pre-oral argument conference; participated in oral argument as second chair	3.00
3/17/2023	David Giza	Return travel from Ithaca, New York for oral argument.	6.00
3/17/2023	Amy Odom	Return travel from Ithaca NY for oral argument.	5.00
3/23/2023	David Giza	Returned missed phone call from client, discussed oral arguments and judges' questions, timeline remaining for decision. Answered client's related questions including possible remedies and outcomes. Updated client file.	0.30
3/23/2023	David Giza	Called client to discuss recent oral argument, no answer, left voicemail. Updated client file.	0.10
5/12/2023	Amy Odom	Reviewed and analyzed precedential decision.	0.40
5/16/2023	Zachary Stolz	Reviewed docket and notes. Prepared letter to client concerning Court's precedential decision.	0.30
5/18/2023	David Giza	21-5454: Additional phone call to client to discuss recent favorable precedential decision, no answer, left additional voicemail. Updated client file.	0.03
5/18/2023	David Giza	21-5454: Spoke with client, discussed recent favorable precedential decision. Answered client's questions regarding same. Updated client file.	0.30
5/23/2023	David Giza	21-5454: Phone conversation with client in response to his receipt of decision, explained judgment and mandate processes following decision. Updated client file.	0.20
6/5/2023	David Giza	21-5454: Received and reviewed notice of Court entering judgment on recent favorable precedential decision. Updated client file.	0.10

Exhibit A

7/6/2023	Danielle Gorini	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
7/6/2023	Zachary Stolz	Reviewed EAJA Petition and Exhibit A for time accuracy and proofreading purposes.	0.40
7/6/2023	Danielle Gorini	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	2.00
Expenses	Amy Odom	Airfare: \$466.40	
		Car: \$393.39	
		Hotel: \$471.64	
		Lyft: \$29.99	
	David Giza	Airfare: \$427.68	
		Hotel: \$471.64	

Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Zachary Stolz	6.70	\$ 232.60	\$ 1,558.42

Exhibit A

Shawn Wright	0.20	\$	232.60	\$	46.52
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Manfredi Avarie	2.60	\$	180.00	\$	468.00
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LaForce Geoffery	4.30	\$	180.00	\$	774.00
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Emma Peterson	0.60	\$	232.60	\$	139.56
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David Giza	84.90	\$	227.70	\$	19,331.73
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Danielle Gorini	2.20	\$	232.60	\$	511.72
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Amy Odom	64.40	\$	227.70	\$	14,663.88
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Total Hours:	165.90				
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Total Fee Amount:				\$39,754.57	
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EXHIBIT 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'").