

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

SHARON RIECHERS,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 18-4489
)	
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)**

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v.)	Vet. App. No. 18-4489
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Secretary of Veterans Affairs,)	
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**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. Rule 39, Appellant, Sharon Riechers, applies for an award of reasonable attorneys’ fees and expenses in the amount of **\$ 41,995.52.**

PROCEDURAL HISTORY

On August 2, 2018, the Board of Veterans’ Appeals (Board) issued a decision that, *inter alia*, denied the veteran’s claim for entitlement to service connection for a bilateral leg disability as secondary to service-connected chronic myeloid leukemia.¹ A timely Notice of Appeal was filed with this Court on August 16, 2018.

On October 16, 2018, the Secretary served on the veteran the 1,118-page Record Before the Agency (RBA). On November 13, 2018, the Court issued an Order

¹ The veteran did not challenge that part of the Board decision that denied entitlement to financial assistance for automobile or other conveyance and adaptive equipment, or adaptive equipment only. See *Pederson v. McDonald*, 27 Vet. App. 276, 283-85 (2015) (en banc).

to file the initial brief within sixty days. On January 22, 2019, the Court issued an Order instructing the veteran to file the initial brief within 20 days. On February 1, 2019, the veteran filed an informal brief appealing the previous denial of service connection for a bilateral leg disability, claimed as leg weakness and instability, to include as secondary to chronic myeloid leukemia. See App. Inf. Br. at 4. On May 20, 2019, Appellee filed a brief wherein the Secretary argued that the Board correctly denied the claim because the record does not show that leukemia caused or aggravates the bilateral leg disability and that the Board properly presumed the March 2017 VA examiner's competency because her competency was not challenged below. See Sec. Br. at 5–9. On June 20, 2019, the Secretary filed a Record of Proceedings (ROP) with the Court. On July 23, 2019, it was ordered that the case be submitted to panel. After the veteran retained counsel, the Court issued an Order scheduling a Rule 33 Staff Conference on September 17, 2019.

Pursuant to the Court's Order, Appellant's counsel prepared a 6-page Rule 33 Summary of the Issues addressing the legal errors committed by the Board in the decision on appeal, which he served on counsel for the Secretary and Central Legal Staff (CLS) counsel on September 3, 2019. On September 17, 2019, the Rule 33 Staff Conference was held as scheduled, but the parties failed to arrive at a joint resolution.

On December 2, 2019, Mr. Spicer filed his 17-page initial brief (hereinafter, App. Br.) with the Court. In his brief, he argued that the Board erred in finding he was not entitled to service connection for the worsening of his lower leg disabilities,

as his chemotherapy for his service-connected myeloid leukemia worsened his functional impairment from his bilateral knee arthritis by preventing arthroplasty to treat his bilateral knee arthritis. See 38 U.S.C. § 1110 (2018); *Saunders v. Wilkie*, 886 F.3d 1356 (Fed. Cir. 2018); App. Br. at 6–8. Mr. Spicer further argued that the Board erred in relying on § 3.310(b)’s restriction that an increase in the severity of functional impairment warrants service connection only if “not due to the natural progress of the nonservice-connected disease,” as the valid portion of § 3.310(b) does not alter entitlement to secondary service connection when a service-connected disability’s treatment worsens the functional impairment from a second disability by interfering with its treatment. See 38 C.F.R. § 3.310(b); 38 U.S.C. § 1153; App. Br. at 8–11. In the alternative, Mr. Spicer argued that the Secretary’s refusal to acknowledge service connection when a service-connected disability’s treatment worsens functional impairment from a second disability by interfering with its treatment is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. See *Simmons v. Wilkie*, 30 Vet. App. 267 (2018); App. Br. at 14–16.

On March 16, 2020, the Secretary filed his responsive brief (hereinafter, Sec. Br.) with the Court. In his brief, the Secretary argued that secondary service connection is not permitted where a service-connected disability prevents potential improvement of another disability but does not cause or aggravate such disability. See Sec. Br. at 6–14. The Secretary further argued that the natural worsening of a non-service-connected disability cannot be secondarily service-connected, and the

Court should reject Appellant's argument that permits compensation for the natural worsening of his knee condition. See Sec. Br. at 14–19.

On May 14, 2020, Mr. Spicer filed his 16-page Reply Brief (hereinafter, App. Rep. Br.) with the Court. Responding to the Secretary's argument, Mr. Spicer explained that the Secretary may not require that the service-connected disability etiologically cause or worsen the other disability. See 38 U.S.C. §§ 1110 and 1131; App. Rep. Br. at 2–10. Specifically, Mr. Spicer explained that Congress unambiguously intends not to restrict secondary service connection for worsening to situations where the relationship between the service-connected condition and the second condition's worsening is etiological. See 38 U.S.C. §§ 1110 and 1131; *Saunders*, 886 F.3d at 1362–65; *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984); App. Rep. Br. at 3–6. Also, Mr. Spicer explained the Secretary's restriction of secondary service connection for worsening to require etiological causation is ineligible for *Chevron* deference. See 38 C.F.R. § 3.310(b); *Allen v. Brown*, 7 Vet. App. 439 (1995); *Ward v. Wilkie*, 31 Vet. App. 233 (2019); App. Rep. Br. at 6–7. Additionally, Mr. Spicer argued the Secretary's restriction of secondary service connection for worsening to require etiological causation fails because it does not warrant deference. See App. Rep. Br. at 7–9. Further, Mr. Spicer argued that the Secretary's restriction of secondary service connection to require etiological causation fails because it lacks the power to persuade. See *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944); App. Rep. Br. at 9–10. Moreover, Mr. Spicer explained that the Secretary may not restrict secondary service connection to

require that the second disability's worsening be beyond its natural progress. See *Chevron*, 467 U.S. at 842; App. Rep. Br. at 10–15.

On May 28, 2020, the Secretary filed the Record of Proceedings with the Court. On June 9, 2020, Mr. Spicer filed his response to the Record of Proceedings. On June 11, 2020, the Court ordered the case be submitted to a panel for decision. On June 19, 2020, the Court scheduled oral argument in the case for September 29, 2020. On September 29, 2020, oral argument was held as scheduled before the panel of Judges Pietsch, Allen, and Toth.

On September 14, 2021, the Court issued its Precedential Decision (hereinafter, Prec. Dec.). In the decision, the Court affirmed the Board's decision, holding that the relevant statutory language does not direct VA to provide compensation absence causation or aggravation. Prec. Dec. at 1–2. The Court held that the phrase “resulting from” in 38 U.S.C. § 1110 requires actual causality and does not encompass the natural progress of disabilities that might have otherwise been less severe were it not for a service-connected disability. Prec. Dec. at 5–6. The Court further held that 38 C.F.R. § 3.310(b) is consistent with section 1110 and is a permissible construction of the statute. Prec. Dec. at 10. Judge Allen dissented. Prec. Dec. at 12–21. The dissent urged that the phrase “disability resulting from” in section 1110 sets out a much broader, causation-based standard than that advanced by the majority and, as such, section 3.310(b) improperly limits the statutory language in a way Congress did not intend. Prec. Dec. at 12. The Court entered Judgment on October 6, 2021.

On November 17, 2021, Mr. Spicer appealed to the United States Court of Appeals for the Federal Circuit (hereinafter Federal Circuit). The Notice of Appeal was transmitted to the Federal Circuit on December 6, 2021, and the appeal was docketed on December 8, 2021.

On February 28, 2022, Mr. Spicer filed his 26-page brief with the Federal Circuit (hereinafter App. Fed. Cir. Br.). Mr. Spicer argued that the phrase “resulting from” and the related phrase “the result of” simply requires a causal connection. *See Brown v. Gardner*, 513 U.S. 115, 119-20 (1994); App. Fed. Cir. Br. at 9-14. Mr. Spicer further argued that the Veterans Court improperly looked to a different statutory provision with a different causal standard, 38 U.S.C. § 1153, to support its interpretation of section 1110. App. Fed. Cir. Br. at 14-18. Finally, Mr. Spicer argued that a broad interpretation of section 1110 is a workable and common standard in both VA decisions and other legal contexts and, 38 C.F.R. § 3.310(b)’s exclusion of conditions causally connected to service is contrary to section 1110. App. Fed. Cir. Br. at 18-25.

On May 20, 2022, the Secretary filed a brief with the Federal Circuit (hereinafter Sec. Fed. Cir. Br.). The Secretary argued that the Veterans Court properly invoked and applied actual (but-for) causation/aggravation. Sec. Fed. Cir. Br. at 12-20. The Secretary further argued that the Federal Circuit lacked jurisdiction over the Veterans Court’s application of the actual causation requirement to Mr. Spicer’s circumstances, stating that Mr. Spicer’s challenge may be construed as no more than a challenge to the Veteran’s Court’s application of

law to fact. Sec. Fed. Cir. Br. at 20-21. Finally, the Secretary argued that section 1110 is concerned with the present disability and its cause, not possibilities for improvement. Sec. Fed. Cir. Br. at 24-33.

On June 17, 2022, Mr. Spicer filed his 15-page reply brief with the Federal Circuit (hereinafter App. Fed. Cir. Rep. Br.). Mr. Spicer argued that, while the Veterans Court and the Secretary employed the language of actual or but-for causation, they use a narrower standard, and that the Veterans Court erroneously concluded that but-for causation requires an “etiological nexus” or “etiological link.” App. Fed. Cir. Rep. Br. at 1–2. Mr. Spicer further argued that because the current state of his bilateral knee arthritis flows from his service, by way of an inability to receive treatment due to his service-connected leukemia, his bilateral knee arthritis should be service-connected. App. Fed. Cir. Br. at 2–3. Finally, Mr. Spicer argued that VA’s secondary service connection regulation, 38 C.F.R. § 3.310(b), improperly imposes a proximate causation standard on section 1110 causation. App. Fed. Cir. Br. at 8–12.

On June 27, 2022, Mr. Spicer filed the Joint Appendix with the Federal Circuit. On November 18, 2022, the Federal Circuit scheduled oral argument in the case for January 10, 2023. On January 10, 2023, oral argument was held as scheduled.

On March 8, 2023, the Federal Circuit issued a precedential decision vacating and remanding the Court’s September 2021 decision (hereinafter Fed. Cir. Dec.). The Federal held that section “1110 plainly requires compensation when a service-connected disease or injury is a but-for cause of a present-day disability.

This broad language applies to the natural progression of a condition not caused by a service-connected injury or disease, but that nonetheless would have been less severe were it not for the service-connected disability. Stated another way, § 1110 provides for compensation for a worsening of functionality— whether through an inability to treat or a more direct, etiological cause. Nothing in the statute limits § 1110 to onset or etiological causes of a worsening in functionality.” Fed. Cir. Dec. at 8. Finally, the Federal Circuit held that, to the extent VA applied section 3.310(b) to reject Mr. Spicer’s theory of compensation, that regulation is unlawful as inconsistent with 38 U.S.C. § 1110. Fed. Cir Dec. at 11. The Federal Circuit entered judgment on March 8, 2023.

On March 22, 2023, counsel filed a Notice of Death with the Federal Circuit. On May 1, 2023, the Federal Circuit issued its mandate.

On June 22, 2023, counsel filed a motion to substitute Mr. Spicer’s granddaughter, Sharon Riechers, as Appellant in the appeal. On June 29, 2023, the Court granted the motion to substitute.

On July 11, 2023, the Court issued an Order dissolving the panel. On July 18, 2023, the Court issued a Memorandum Decision (hereinafter Mem. Dec.) vacating the Board’s decision and remanding for further proceedings. Mem. Dec. at 1. The Court held that the Board’s conclusion that Mr. Spicer’s “inability to undergo knee replacement surgery because of the effects of his service-connected leukemia is not contemplated by the applicable laws” is wrong as a matter of law. Mem. Dec. at 4. The Court remanded the matter for the Board to apply the correct

interpretation of section 1110. *Id.*

Judgment was entered on August 9, 2023. Mandate was issued, effective October 10, 2023.

ARGUMENT

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

Under 28 U.S.C. § 2412(d), a court shall award to a prevailing party fees and other expenses incurred by that party in any civil action, including proceedings for judicial review of agency action. 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) (quoting *Texas State Teachers Assn. v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791-92 (1989)).

In this case, Appellant is a prevailing party entitled to an award of fees and costs because the Court vacated the relevant part of the Board’s August 2, 2018 decision based on administrative error and remanded the matter for readjudication consistent with its decision. See *Zuberi v. Nicholson*, 19 Vet. App. 541 (2006); *Sumner v. Principi*, 15 Vet. App. 256 (2001) (en banc). The Court-ordered relief creates the “material alteration of the legal relationship of the parties’ necessary to permit an award of attorney’s fees.” *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep’t of Health and Human Res.*, 532 U.S. 598, 604 (2001) (quoting *Garland Indep. Sch. Dist.*, 489 U.S. at 792).

Appellant is a party eligible to receive an award of reasonable fees and expenses because the veteran's net worth did not exceed \$2 million (two million dollars) at the time this civil action was filed. As an officer of the Court, the undersigned counsel hereby states that the veteran's net worth did not exceed \$2 million (two million dollars) at the time this civil action was filed, nor did he own any unincorporated business, partnership, corporation, association, unit of local government, or organization, of which the net worth exceeded \$7 million (seven million dollars) 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. Am. Battle Monument Comm'n*, 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 and litigation positions were not substantially justified. As described in the "Procedural History," *supra*, the Court vacated and remanded the relevant part of the decision on appeal because the Board erred by reading an etiological causation standard into the plain meaning of section

1110 and remand was required for additional proceedings. Mem. Dec. at 4. This error, and others committed by the Board, had no reasonable basis in fact or in law.

In addition, the litigation position of the Secretary, defending the Board's decision despite the aforementioned error, had no basis in fact or law.

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

An itemized statement of the services rendered and the reasonable fees and expenses for which Appellant seeks compensation is attached to this application as Exhibit A. Included in Exhibit A is a certification that 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 v. Nicholson*, 19 Vet. App. 227, 240 (2005). In the exercise of billing judgment, Appellant has eliminated **20.5** hours of attorney time² and **3.7** hours of paralegal and law clerk time from this itemized statement and this fee petition.

Appellant seeks attorneys' fees at the following rates for representation in the Court of Appeals for Veterans Claims:³

² There were also additional attorney hours, including related to moot oral argument preparation and participation, that were wholly excluded from this application.

³ A rate in excess of \$125 per hour for the attorneys 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 Washington Metropolitan Area, was \$208.95 in 2019, \$210.82 in 2020, \$219.17 in 2021, \$233.68 in 2022, and \$239.01 in 2023, the years over which litigation took place in this case. See Bureau of Labor Statistics Data, CPI-U (Exhibit B). The rates were calculated by using the CPI-U for the

<u>Name</u>	<u>Rate</u>	<u>Hours</u>	<u>Fee Amount</u>
Renee Burbank (2009 law graduate)	\$ 239.01	13.6	\$ 3,250.54
	\$ 233.68	42.7	\$ 9,978.14
	\$ 219.17	0.6	\$ 131.50
Barton F. Stichman (1974 law graduate)	\$ 239.01	4.2	\$ 1,003.84
	\$ 233.68	3.6	\$ 841.25
	\$ 219.17	0.6	\$ 131.50
	\$ 210.82	0.6	\$ 126.49
Christine Cote Hill (1996 law graduate)	\$ 239.01	8.0	\$ 1,912.08
Christopher G. Murray (2006 law graduate)	\$ 239.01	4.0	\$ 956.04
	\$ 233.68	0.5	\$ 116.84
	\$ 210.82	4.0	\$ 843.28
Stacy A. Tromble (2007 law graduate)	\$ 239.01	4.7	\$ 1,123.35
	\$ 233.68	0.2	\$ 46.74
	\$ 219.17	0.6	\$ 131.50
	\$ 210.82	4.4	\$ 927.61
	\$ 208.95	1.5	\$ 313.43

Washington-Arlington-Alexandria, DC-VA-MD-WV area adjusted for inflation between March 1996 and the annual CPI-U for the years 2019, 2020, 2021, and 2022, and the annual CPI-U (Half 1) for 2023. See Exhibit B; *Mannino v. West*, 12 Vet. App. 242 (1999). The market rates for Appellant’s attorneys exceeded the requested rates per hour during the relevant time period. See *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). The prevailing market rate for the work done by paralegals and law clerks was at least \$173.00 from June 1, 2019, to May 31, 2020, and at least \$180.00 from June 1, 2020, to the present. See USAO Attorney’s Fees Matrix, 2015-2021 (Exhibit C) (“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 . . . area.”); see also *Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996); *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008).

John Niles	\$ 210.82	34.8	\$ 7,336.54
(2008 law graduate)	\$ 208.95	33.7	\$ 7,041.62
L. Michael Marquet	\$ 208.95	1.5	\$ 313.43
(2017 law graduate)			
Sierra Myers	\$ 180.00	15.6	\$ 2,808.00
(law clerk)			
Andrew Risk	\$ 180.00	0.4	\$ 72.00
(paralegal)			
Janee LeFrere	\$ 173.00	0.5	\$ 86.50
(paralegal)			
Brianna LeFrere	\$ 180.00	5.3	\$ 954.00
(paralegal)			
Angela Nedd	\$ 180.00	1.6	\$ 288.00
(paralegal)	\$ 173.00	0.1	\$ 17.30
Jack McCaffrey	\$ 180.00	3.0	\$ 540.00
(law clerk)			
Paige James	\$ 180.00	0.4	\$ 72.00
(paralegal)			
SUBTOTAL:			\$ 41,363.52

The reasonable expenses for which Appellant seeks compensation are:

<u>Nature of Expense</u>	<u>Expense Amount</u>
Federal Express and USPS Charges	\$ 32.00
Duplication Charges	\$ 50.00
CAVC Filing Fee	\$ 50.00
Federal Circuit Filing Fee	\$ 500.00

SUBTOTAL: \$ 632.00

TOTAL: \$ 41,995.52

WHEREFORE, Appellant respectfully requests that the Court award attorneys' fees and expenses in the total amount of **\$ 41,995.52.**

Respectfully submitted,

FOR APPELLANT:

Date: November 9, 2023

/s/ Christine Cote Hill
Christine Cote Hill
Stacy A. Tromble
National Veterans Legal Services Program
1100 Wilson Blvd., Suite 900
Arlington, VA 22209
(202) 621-5674

Counsel for Appellant

CERTIFICATION

As lead counsel in this appeal, I have reviewed the combined billing statement attached as Exhibit A and I am satisfied that it accurately reflects the work performed by all counsel and I have considered and eliminated all time that is excessive or redundant.

/s/ Christine Cote Hill
Christine Cote Hill

EXHIBIT A

NVLSP Staff Hours for Sharon Riechers,
Vet. App. No. 18-4489

Date: 8/1/2019 3.5 Staff: John Niles
Review and analyze relevant materials to evaluate issues on appeal (2.8); Draft memorandum regarding issues to raise on appeal (0.7).

Date: 8/6/2019 0.4 Staff: John Niles
Draft correspondence to client regarding case initiation, with documents for client to execute and return (0.4).

Date: 8/8/2019 0.1 Staff: Angela Nedd
Draft Notice of Appearance (0.1).

Date: 8/12/2019 0.1 Staff: John Niles
Review Order scheduling Rule 33 Staff Conference in order to provide update to client; draft correspondence to client regarding case status (0.1).

Date: 8/27/2019 3.6 Staff: John Niles
Review and analyze 1,118-page RBA and take detailed notes for preparation of Rule 33 Summary of the Issues, through page 1,000 (3.6).

Date: 8/28/2019 5.0 Staff: John Niles
Review and analyze 1,118-page RBA and take detailed notes for preparation of Rule 33 Summary of the Issues, through end (1.4); Review relevant law and other authorities to outline argument (2.3); Draft Rule 33 Summary of the Issues (1.3).

Date: 9/3/2019 1.7 Staff: John Niles
Finalize 6-page Rule 33 Summary of the Issues; draft final inserts to argument (1.4); Review and analyze relevant evidence to prepare attachment to Rule 33 Summary of the Issues (0.2); Draft and finalize Rule 33 Certificate of Service (0.1).

Date: 9/17/2019 1.3 Staff: John Niles
Prepare for Rule 33 Staff Conference, including review of Rule 33 Summary of the Issues and relevant evidence (0.3); Participate in Rule 33 Staff Conference (0.3); Draft notes to evaluate VA position and provide update to client; evaluate VA position (0.7).

Date: 9/18/2019 0.4 Staff: John Niles
Draft correspondence to client regarding case status and outcome of Rule 33 Staff Conference (0.4).

NVLSP Staff Hours for Sharon Riechers,
Vet. App. No. 18-4489

Date: 10/4/2019 1.5 Staff: John Niles
Outline initial brief argument (0.9); Draft Statement of the Issues (0.3); Draft Statement of the Case (0.3).

Date: 10/7/2019 4.0 Staff: John Niles
Review tabbed RBA/detailed notes for outstanding issues for preparation of initial brief (1.2); Draft Statement of Facts (2.8).

Date: 10/8/2019 2.2 Staff: John Niles
Draft initial brief argument, Argument IA (2.2).

Date: 10/10/2019 0.5 Staff: John Niles
Draft Summary of the Argument (0.5).

Date: 10/12/2019 1.6 Staff: John Niles
Draft initial brief argument, Argument IB (1.6).

Date: 10/14/2019 4.0 Staff: John Niles
Draft inserts to argument, Argument IB (1.4); Draft initial brief argument, Argument IC (2.6).

Date: 10/17/2019 0.0 Staff: John Niles
Correspondence with VA General Counsel regarding position on motion (0.1); Draft motion for extension of time within which to file initial brief (0.2). **[Entire 0.3 eliminated in the exercise of billing judgment]**

Date: 12/2/2019 3.9 Staff: John Niles
Draft initial brief argument, Argument II (2.0); update inserts to argument, other authority (0.5); Draft final inserts to argument sections (1.0); Draft Conclusion (0.4).

Date: 12/2/2019 1.5 Staff: Stacy A. Tromble
Finalize 17-page initial brief, for J. Niles; draft style edits to add persuasive value and clarity to legal argument (1.5).

Date: 10/15/2019 1.5 Staff: L. Michael Marquet
Update RBA and legal citations to bolster legal argument, for J. Niles (1.0) **[Additional 1.0 eliminated in the exercise of billing judgment]**; Prepare Table of Authorities, initial brief (0.5) **[Additional 0.4 eliminated in the exercise of billing judgment]**.

NVLSP Staff Hours for Sharon Riechers,
Vet. App. No. 18-4489

Date: 1/22/2020 0.1 Staff: John Niles
Correspondence with VA General Counsel regarding NVLSP position on motion;
evaluate same (0.1).

Date: 1/31/2020 0.2 Staff: John Niles
Draft correspondence to client regarding case status (0.2).

Date: 3/19/2020 1.8 Staff: John Niles
Review 23-page responsive brief and outline Secretary's argument for preparation of
reply brief argument outline (1.6); Correspondence with client regarding case status and
reply brief argument (0.2).

Date: 4/26/2020 2.3 Staff: John Niles
Outline reply brief argument (1.2); Review relevant law and other authority for inclusion
in reply brief argument (1.1).

Date: 4/27/2020 4.9 Staff: John Niles
Draft reply brief, preliminary statement (0.3); Draft reply brief argument,
Argument/Argument IA (3.0); continue drafting same (1.6).

Date: 4/28/2020 9.3 Staff: John Niles
Draft reply brief argument, Argument IB (1.5); Draft reply brief argument, Argument IC
(1.5); Draft reply brief argument, Argument ID (1.0); Draft reply brief argument,
Argument II (3.0); continue drafting same (2.1); Draft Conclusion to draft reply brief
argument (0.2).

Date: 5/13/2020 0.2 Staff: John Niles
Draft correspondence to client regarding reply brief for review, with enclosures (0.2).

Date: 5/13/2020 0.5 Staff: Janee LeFrere
Prepare Table of Authorities, reply brief (0.5).

Date: 5/13/2020 1.3 Staff: Stacy A. Tromble
Finalize 15-page reply brief, for J. Niles; draft inserts to add persuasive value and clarity
to legal argument (1.3).

Date: 6/9/2020 0.1 Staff: John Niles
Draft notice of acceptance of ROP (0.1).

NVLSP Staff Hours for Sharon Riechers,
Vet. App. No. 18-4489

Date: 6/9/2020 0.5 Staff: Brianna LeFrere
Review and analyze ROP to ensure legibility and completeness (0.5).

Date: 6/11/2020 0.1 Staff: John Niles
Review and analyze Order for oral argument to provide update to client (0.1).

Date: 6/16/2020 3.0 Staff: Jack McCaffrey
Review relevant law and other authority, for J. Niles, for preparation of presentation (3.0).

Date: 6/17/2020 2.0 Staff: John Niles
Prepare for oral argument, outline affirmative presentation (2.0).

Date: 9/2/2020 2.5 Staff: John Niles
Prepare for oral argument, begin to outline anticipated panel questions and responses (2.5).

Date: 9/11/2020 1.0 Staff: John Niles
Analyze new proposed regulation on aggravation definition and prepare responses regarding same (1.0).

Date: 9/16/2020 1.0 Staff: John Niles
Prepare for oral argument: prepare for and participate in teleconference with S. Tromble and C. Murray regarding strategy and arguments to raise during presentation (1.0).

Date: 9/21/2020 0.6 Staff: Barton F. Stichman
Finalize *Solze* notice (0.6).

Date: 9/23/2020 1.2 Staff: John Niles
Continue to prepare for oral argument; update presentation, add detailed notes to argument outline (0.9). Teleconference with CAVC regarding oral argument logistics; evaluate same; correspondence with client regarding case status, questions regarding same (0.3).

Date: 9/23/2020 0.0 Staff: Stacy A. Tromble
Revise oral argument presentation/update same **[3.9 eliminated in the exercise of billing judgment]**.

NVLSP Staff Hours for Sharon Riechers,
Vet. App. No. 18-4489

Date: 9/24/2020 1.5 Staff: John Niles
Participate in moot argument (1.5).

Date: 9/24/2020 1.5 Staff: Christopher G. Murray
Prepare for moot argument **[0.5 eliminated in the exercise of billing judgment]**;
participate in moot argument (1.5).

Date: 9/24/2020 1.5 Staff: Stacy A. Tromble
Prepare for/participate in moot (1.5).

Date: 9/25/2020 1.5 Staff: Christopher G. Murray
Moot oral argument, preparation for same (1.5).

Date: 9/25/2020 2.6 Staff: John Niles
Continue to prepare for oral argument; participate in moot argument (1.6); update
anticipated panel questions and responses (1.0).

Date: 9/25/2020 1.6 Staff: Stacy A. Tromble
Prepare for and participate in moot (1.6).

Date: 9/28/2020 2.0 Staff: John Niles
Continue to prepare for oral argument; finalize updates to presentation/argument
outline; update anticipated panel questions and responses (2.0).

Date: 9/29/2020 0.0 Staff: Barton F. Stichman
Listen to oral argument and evaluate same **[1.2 eliminated in the exercise of billing judgment]**.

Date: 9/29/2020 1.0 Staff: Christopher G. Murray
Participate in oral argument (1.0).

Date: 9/29/2020 2.0 Staff: John Niles
Continue to prepare for oral argument; final insert to anticipated panel question/review
relevant materials (1.0). Participate in oral argument (1.0).

Date: 10/1/2020 0.2 Staff: Angela Nedd
Draft correspondence to client regarding case status, questions regarding same (0.2).

NVLSP Staff Hours for Sharon Riechers,
Vet. App. No. 18-4489

Date: 9/14/2021 0.6 Staff: Barton F. Stichman
Review Memorandum Decision to evaluate next steps (0.6).

Date: 10/6/2021 0.6 Staff: Stacy A. Tromble
Teleconference with client regarding case initiation, questions regarding same (0.6).

Date: 11/17/2021 0.1 Staff: Brianna LeFrere
Draft correspondence to Clerk, Federal Circuit (0.1).

Date: 11/17/2021 0.4 Staff: Renee Burbank
Draft entry of appearance (0.1); Draft Notice of Appeal to the United States Court of Appeals for the Federal Circuit; finalize same (0.3).

Date: 12/13/2021 0.2 Staff: Renee Burbank
Draft certificate of interest (0.2).

Date: 1/6/2022 0.2 Staff: Renee Burbank
Draft docketing statement (0.2).

Date: 1/6/2022 0.1 Staff: Barton F. Stichman
Finalize docketing statement, for R. Burbank (0.1).

Date: 1/20/2022 2.0 Staff: Renee Burbank
Review relevant law and other authorities for inclusion in argument and outline brief (2.0).

Date: 1/21/2022 2.0 Staff: Renee Burbank
Review tabbed RBA/detailed notes to update outline (2.0).

Date: 1/27/2022 0.3 Staff: Renee Burbank
Draft brief, Jurisdictional Statement, Statement of the Issue (0.3).

Date: 2/7/2022 5.2 Staff: Renee Burbank
Draft brief, Federal Circuit, Statement of the Case I (0.5); Statement of the Case II (3.0);
Draft Summary of the Argument (0.3); Draft Argument I (0.2); Draft Argument II/IIA (1.2).

Date: 2/9/2022 6.0 Staff: Renee Burbank

NVLSP Staff Hours for Sharon Riechers,
Vet. App. No. 18-4489

Draft brief, Federal Circuit, Argument IIA (3.0); continue drafting same (2.0); Draft Argument IIB (1.0).

Date: 2/14/2022 6.5 Staff: Renee Burbank
Draft brief, Federal Circuit, Argument IIB (3.0); Draft Argument IIC (3.0); Draft Argument III (0.5).

Date: 2/18/2022 3.0 Staff: Renee Burbank
Draft insert to Argument IIB (0.5); Draft insert to Argument IIC (1.0); Continue drafting Argument III (1.0); Draft Conclusion (0.5).

Date: 2/18/2022 1.5 Staff: Barton F. Stichman
Add final inserts to argument sections, for R. Burbank (1.5).

Date: 2/18/2022 0.0 Staff: Stacy A. Tromble
Add inserts to brief **[1.6 eliminated in the exercise of billing judgment]**.

Date: 2/21/2022 3.7 Staff: Renee Burbank
Finalize 26-page brief, Federal Circuit, add final inserts to add persuasive value and clarity to legal argument (3.7).

Date: 2/22/2022 1.3 Staff: Angela Nedd
Update Table of Authorities, Federal Circuit initial brief (1.0) **[Additional 0.8 eliminated in the exercise of billing judgment]**; Begin to prepare Appendix, Federal Circuit initial brief (0.3).

Date: 2/23/2022 0.0 Staff: Renee Burbank
Attention to brief **[2.0 eliminated in the exercise of billing judgment]**.

Date: 3/28/2022 0.2 Staff: Stacy A. Tromble
Teleconference with client regarding case status, questions regarding same (0.2).

Date: 5/31/2022 4.2 Staff: Sierra Myers
Motion to extend time for reply brief filing **[1.0 eliminated in the exercise of billing judgment]**; review responsive brief and outline argument for preparation of reply brief argument outline (3.0); outline reply brief argument (1.2).

Date: 6/1/2022 0.7 Staff: Renee Burbank

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Finalize outline (0.7).

Date: 6/3/2022 6.0 Staff: Sierra Myers
Draft reply brief, Argument I/IA (2.5); Draft Argument IB (1.5); Draft Argument IC (2.0).

Date: 6/10/2022 2.0 Staff: Renee Burbank
Review relevant law and other authorities for inclusion in argument (2.0).

Date: 6/14/2022 2.0 Staff: Renee Burbank
Draft Summary of the Argument (0.5); Add inserts to argument sections (1.5).

Date: 6/14/2022 4.1 Staff: Sierra Myers
Draft reply brief, Argument II (2.5); Draft Argument III (1.5) **[Additional 1.9 eliminated in the exercise of billing judgment]**; Draft Conclusion (0.1).

Date: 6/15/2022 2.0 Staff: Barton F. Stichman
Finalize inserts to reply brief argument sections, for R. Burbank (2.0).

Date: 6/15/2022 1.3 Staff: Sierra Myers
Update RBA and legal citations to bolster legal argument (0.8); finalize Table of Authorities (0.5).

Date: 6/17/2022 0.7 Staff: Renee Burbank
Finalize 15-page reply brief, Federal Circuit; draft style edits to add persuasive value and clarity to legal argument (0.7).

Date: 6/22/2022 0.1 Staff: Renee Burbank
Prepare/evaluate joint appendix (0.1).

Date: 6/24/2022 0.2 Staff: Renee Burbank
Finalize joint appendix (0.2).

Date: 11/22/2022 0.3 Staff: Renee Burbank
Evaluate case status and finalize response to oral argument notice (0.3).

Date: 12/1/2022 0.1 Staff: Renee Burbank
Correspondence with DOJ counsel regarding appearance and conference; evaluate

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same (0.1).

Date: 12/2/2022 0.6 Staff: Renee Burbank
Teleconference with DOJ counsel regarding possible settlement (0.2); evaluate same (0.4).

Date: 12/5/2022 0.5 Staff: Christopher G. Murray
Teleconference with client regarding settlement offer, detailed questions regarding same (0.5).

Date: 12/12/2022 0.6 Staff: Renee Burbank
Prepare for oral argument; outline presentation (0.6).

Date: 12/28/2022 4.0 Staff: Renee Burbank
Prepare for oral argument; outline presentation (2.5); begin outline of anticipated questions/responses (1.5).

Date: 12/28/2022 0.0 Staff: Barton F. Stichman
Review of briefs to prepare for conference with R. Burbank and C. Murray to discuss assignment **[0.8 eliminated in the exercise of billing judgment]**.

Date: 12/29/2022 2.5 Staff: Renee Burbank
Review relevant authority; update outline of presentation (1.5); outline anticipated questions/responses (1.0).

Date: 1/3/2023 1.2 Staff: Barton F. Stichman
Evaluate litigation strategy, oral argument, for R. Burbank (1.2).

Date: 1/4/2023 4.5 Staff: Renee Burbank
Prepare for moot for oral argument; review relevant materials, and update outline of presentation/list of anticipated questions/responses (3.5); Moot for Federal Circuit argument (1.0).

Date: 1/5/2023 1.0 Staff: Barton F. Stichman
Participate in moot oral argument (1.0).

Date: 1/5/2023 1.0 Staff: Christopher G. Murray
Prepare for moot argument **[0.5 eliminated in the exercise of billing judgment]**; moot for oral argument (1.0).

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Date: 1/5/2023 2.0 Staff: Renee Burbank
Moot for Federal Circuit argument (1.0); oral argument preparation and related research (1.0).

Date: 1/5/2023 0.3 Staff: Stacy A. Tromble
Correspondence with client regarding case status, questions regarding same (0.3).

Date: 1/9/2023 2.6 Staff: Renee Burbank
Oral argument preparation; update outlines (1.6); participate in moot oral argument (1.0).

Date: 1/9/2023 1.5 Staff: Barton F. Stichman
Review relevant law and participate in moot for oral argument; update outline, for R. Burbank (1.5).

Date: 1/9/2023 1.5 Staff: Christopher G. Murray
Moot for oral argument (1.5).

Date: 1/9/2023 0.0 Staff: Stacy A. Tromble
Moot oral argument session **[1.2 eliminated in the exercise of billing judgment]**.

Date: 1/10/2023 3.0 Staff: Renee Burbank
Prepare for and participate in oral argument; evaluate case status (3.0).

Date: 1/10/2023 0.3 Staff: Stacy A. Tromble
Teleconference with client to follow up on oral argument, questions regarding same (0.3); Oral Argument, follow-up regarding same (and travel time associated with same) **[3.8 eliminated in the exercise of billing judgment]**.

Date: 1/10/2023 1.5 Staff: Christopher G. Murray
Final preparation for and attend oral argument at Federal Circuit (1.5).

Date: 1/10/2023 0.0 Staff: Barton F. Stichman
Attend oral argument (1.3); evaluate case status (0.5) **[Entire 1.8 eliminated in the exercise of billing judgment]**.

Date: 3/8/2023 0.6 Staff: Renee Burbank
Review Federal Circuit decision in order to provide update to client (0.6).

NVLSP Staff Hours for Sharon Riechers,
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Date: 3/9/2023 0.4 Staff: Stacy A. Tromble
Teleconference with client regarding Federal Circuit decision and next steps, questions regarding same (0.4).

Date: 3/9/2023 0.3 Staff: Renee Burbank
Teleconference with co-counsel, family of client regarding expediting mandate; evaluate case status (0.3).

Date: 3/13/2023 0.5 Staff: Barton F. Stichman
Review relevant law, death of client/case status, Federal Circuit, to evaluate next steps (0.5).

Date: 3/14/2023 0.4 Staff: Brianna LeFrere
Draft correspondence to client regarding case initiation, with documents for client to execute and return (0.4).

Date: 3/14/2023 0.4 Staff: Andrew Risk
Evaluate reimbursement of costs (0.4).

Date: 3/14/2023 0.4 Staff: Stacy A. Tromble
Teleconference with client's granddaughter regarding case status, detailed questions regarding same (0.4).

Date: 3/21/2023 0.2 Staff: Renee Burbank
Email exchanges with DOJ counsel regarding bill of costs; evaluate same (0.2).

Date: 3/22/2023 0.4 Staff: Renee Burbank
Draft suggestion of death (0.2); finalize suggestion of death for Federal Circuit (0.2).

Date: 5/9/2023 0.6 Staff: Stacy A. Tromble
Draft supportive documentation, motion for substitution (0.6).

Date: 5/22/2023 1.0 Staff: Stacy A. Tromble
Draft motion for substitution (0.8); Finalize Notice of Death (0.2).

Date: 5/24/2023 0.1 Staff: Angela Nedd
Review correspondence from client regarding case status, evaluate same; Finalize death certificate (0.1).

NVLSP Staff Hours for Sharon Riechers,
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Date: 6/20/2023 0.4 Staff: Paige James
Finalize supportive documentation, motion for substitution, for S. Tromble (0.4).

Date: 6/21/2023 0.3 Staff: Brianna LeFrere
Draft Notices of Appearance, per Court instruction; finalize same (0.3).

Date: 6/21/2023 0.5 Staff: Christine Cote Hill
Finalize motion for substitution, for S. Tromble (0.5).

Date: 6/23/2023 2.5 Staff: Brianna LeFrere
Prepare list of itemized hours to be attached as exhibit to Equal Access to Justice Act (EAJA) (2.5).

Date: 6/29/2023 0.1 Staff: Stacy A. Tromble
Review Order in order to provide update to client regarding case status; evaluate next steps in appeal (0.1).

Date: 7/18/2023 1.6 Staff: Stacy A. Tromble
Review Memorandum Decision in order to provide update to client (0.5); Draft correspondence to client regarding close of case and recommendations regarding same (1.1).

Date: 11/6/2023 7.5 Staff: Christine Cote Hill
Prepare application for reasonable attorneys' fees and expenses under the EAJA (3.0); elimination of hours in the interest of billing judgment (4.5) **[Additional 1.5 eliminated in the exercise of billing judgment]**.

Date: 11/7/2023 1.5 Staff: Brianna LeFrere
Finalize application, to include adding detail to application and itemized list (1.5).

EXHIBIT B



Databases, Tables & Calculators by Subject

Change Output Options:

From: 1996 To: 2023

☐ include graphs ☐ include annual averages

[More Formatting Options](#)

Data extracted on: October 13, 2023 (2:50:30 PM)

CPI for All Urban Consumers (CPI-U)

Series Id: CUURS35ASA0,CUUSS35ASA0
Not Seasonally Adjusted
Series Title: All items in Washington-Arlington-Alexandria, DC-VA-MD-WV, all urban consumers, not seasonally adjusted
Area: Washington-Arlington-Alexandria, DC-VA-MD-WV
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	156.8		158.4		159.0		160.1		160.8		161.2		159.6	158.3	160.8
1997	161.6		161.9		162.1		162.9		163.6		161.8		162.4	162.0	162.8
1998	162.5		163.5		163.6		164.9		165.2		164.5				
1999	165.4		165.9		167.0		168.3		169.8		169.1				
2000	169.8		173.2		172.5		174.8		175.0		175.3				
2001	175.9		177.2		178.0		179.2		180.9		179.5				
2002	180.0		181.9		183.6		184.2		185.8		185.4				
2003	186.3		188.8		188.7		190.2		190.8		190.4				
2004	190.7		192.8		194.1		195.4		196.5		197.2				
2005	198.2		200.4		201.8		202.8		205.6		204.3				
2006	205.6		206.4		209.1		211.4		211.2		210.1				
2007	211.101		214.455		216.097		217.198		218.457		218.331				
2008	220.587		222.554		224.525		228.918		228.871		223.569				
2009	221.830		222.630		223.583		226.084		227.181		226.533				
2010	227.440		228.480		228.628		228.432		230.612		230.531				
2011	232.770		235.182		237.348		238.191		238.725		238.175				
2012	238.994		242.235		242.446		241.744		244.720		243.199				
2013	243.473		245.477		245.499		246.178		247.838		247.264				
2014	247.679		249.591		250.443		250.326		250.634		249.972				
2015	247.127		249.985		251.825		250.992		252.376		251.327		250.664	249.828	251.500
2016	250.807		252.718		254.850		254.305		253.513		253.989		253.422	253.049	253.795
2017	254.495		255.435		255.502		255.518		257.816		257.872		256.221	255.332	257.110
2018	260.219		260.026		261.770		262.016		263.056		261.120		261.445	260.903	261.987
2019	262.304		264.257		265.967		265.170		265.500		265.026		264.777	264.252	265.301
2020	266.433		265.385		265.733		267.287		268.788		268.700		267.157	265.954	268.359
2021	270.535		272.347		275.822		279.099		280.933		284.240		277.728	273.603	281.852
2022	286.678		292.227		296.559		299.937		299.268		300.085		296.117	292.543	299.690
2023	299.149		302.930		305.614		305.273		309.254					302.876	

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EXHIBIT C

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'").