

DECLARATION OF WILLIAM E. ZIMINSKY

STATE OF ~~MAINE~~ MASSACHUSETTS §
COUNTY OF MIDDLESEX §

Pursuant to 28 U.S.C. 1746, I, WILLIAM E. ZIMINSKY, declare under penalty of perjury that the following is true and correct:

1. My name is William Edward Ziminsky.
2. I am more than eighteen years of age, of sound mind, and fully competent to make this declaration.
3. I have personal knowledge of the matters set forth below and they are all true and correct.
4. I am the Appellant in this appeal.
5. At the time that my appeal to the Court of Appeals for Veterans Claims was filed, my personal net worth did not exceed \$2 million dollars; nor did I own any unincorporated business, partnership, corporation, association, unit of local government, or organization, of which the net worth exceeded \$2 million dollars and which had more than 500 employees.

Executed on AUGUST 23, 2017

Signature: William E. Ziminsky
William E. Ziminsky, Appellant

DECLARATION OF CHRIS ATTIG, ATTORNEY

STATE OF ARKANSAS §

COUNTY OF PULASKI §

Pursuant to 28 U.S.C. 1746, I, Chris Attig declare under penalty of perjury that the foregoing is true and correct:

"My name is Chris Attig, Attorney. I am more than eighteen years of age, of sound mind, and fully competent to make this affidavit. I am lead attorney for Appellant in the below styled and numbered cause, and in that capacity I have personal knowledge of the following itemization, and it is true and accurate:

1. Time claimed in this itemization was tracked as it occurred. I have reviewed the attached billing statement and am satisfied that it accurately reflects the work performed on behalf of the client in this matter.
2. Time entries which have "CA" in the "Role" column indicate the work was performed by Attorney of Record Chris Attig who graduated from South Texas College of Law (2003), and is licensed to practice law in Maryland (since 2003) and Texas (since 2006). I have practiced before U.S. Federal District Courts in the Northern and Eastern Districts of Texas, and have briefed and orally argued employment cases on behalf of US Veterans before the Federal Circuit Court of Appeals and the U.S. Fifth Circuit Court of Appeals. I am admitted to the Bar of the Supreme Court of the United States. I have handled a variety of cases in which I have billed hourly, including but not limited to appeals before the federal Merit Systems Protection Board (MSPB) and the Equal Employment Opportunity Commission (EEOC); these forums have awarded me hourly rates as high as \$375 per hour for my appellate legal work, pursuant to the fee-shifting statutes that govern those federal tribunals. I am admitted to practice before the US Court of Veterans Appeals since September 2007, and have been an accredited VA Attorney since 2008. I serve on the Board of Directors for the National Organization of Veterans Advocates (2015 - present), and have published several paper and electronic books on the VA Claims Process and the law of VA Claims. My primary role in this case was setting the strategy and directing the course of representation in this appeal; communicating with the client about the facts of the case, verifying the record on appeal, assessing and deciding on legal strategies, the status of the appeal, and the impact of the appeal on the proceedings below; directly supervising the work of multiple individuals performing work that is paralegal nature; reviewing and verifying the accuracy of the record before the agency; preparing the Rule 33 brief and

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participating in the Rule 33 Conference; negotiating the JMR; and, exercising billing discretion in the preparation of the EAJA petition. Based on the above information, a reasonable hourly rate for my services in an appeal to a federal appellate court is \$375/hr.

3. In the attached itemization, time entries which have “PL” in the “Role” column indicate the nature of the work performed was Paralegal in nature. Attorney Attig employed multiple individuals who performed work that is paralegal in nature in multiple locations in this appeal, who were assigned to work on the case based on skill-sets, training, experience, availability, and other criteria. Each individual performing paralegal work is supervised by Attorney Attig in this case. All paralegal work in this appeal was performed in either Little Rock, Conway, or Hope, Arkansas. In this case, up to 7 different individuals performing paralegal work were used:

- The first received an AAS in Paralegal Studies at the Univ. of Arkansas Community College (Hope) in May 2004, and who worked as a paralegal with this firm for more than 2 years.
- The second graduated the Paralegal Program at the University of Arkansas (Fayetteville) in 1995, served as a paralegal and judicial assistant to a federal court bankruptcy judge for 16 years, and worked for this firm for under 1 year.
- The third is a graduate of Everest College in Dallas, Texas and is a graduate of the Medical Assistant Diploma program who was employed by the firm for under 1 year to perform work that is paralegal in nature as part of a career transition plan.
- The fourth is a graduate of Hendrix College, and a graduate of the University of Arkansas, Little Rock, Law School, with over 25 years of experience as a practicing and licensed attorney and who has been employed by the firm as an attorney since 2015, and who from time to time performs work that is paralegal in nature in support of the firm’s court and administrative appeals dockets.
- The fifth has a B.S. in Legal Studies from the American Military University, and an Associate degree from Pulaski technical college, and who has relevant experience maintaining and verifying the integrity of financial and employee and other business data with Toyota North America for 5 years. This individual has been employed by the firm for under 1 year to perform work that is paralegal in nature in preparation for attendance at law school.
- The sixth is a student at the University of Arkansas Little Rock, with an anticipated graduation date of May 2020, with a degree in Business Administration with relevant experience a) maintaining and reviewing/comparing the accuracy

and completeness of voter and election records in the Arkansas Secretary of State office, b) reviewing and verifying the accuracy of information in residential loan applications for a mortgage broker for 2 years; and c) providing records and program support in a position with the US Dept. of Agriculture for 5 years. This individual has been employed by the firm for under 1 year to perform work that is paralegal in nature, with a focus on record review because of the individual's experience maintaining, researching, verifying, comparing detailed business and government agency records.

- The seventh attends Hendrix College, with an undeclared major, with an anticipated graduation date of May 2022. This individual has been employed by the firm since 2016, initially fulfilling functions other than work that is paralegal in nature. Because of this employee's intelligence (a National Merit semi-finalist who placed at or above the 99th percentile of high school students nationwide in both the SAT and multiple ACTs), critical thinking skills, attention to detail, accuracy, technical knowledge, and rapid grasp of concepts of VA disability law and procedure, he has been promoted and works on a part-time basis primarily performing record review and analysis.
 - For these individuals performing paralegal work, the Laffey Matrix rate is an appropriate measure of the prevailing market rate for a paralegal working with the law firm of Attig | Steel. In 2017, the Laffey Matrix rate for paralegals was \$157/hr, in 2018, the Laffey Matrix rate for paralegals is \$164/hr. These prevailing market rates are corroborated by a 2017 study by a private company which indicates that, in Arkansas, the "real hourly rates" for non-lawyers and paralegals (the rate which compares average billing rates to the estimated cost of living to derive a rate that reflects actual purchasing power), was between \$140 and \$160 per hour. See e.g, Legal Trends Report (2017), found at <https://files.goclio.com/marketo/ebooks/2017-Legal-Trends-Report.pdf> (last visited August 6, 2018).
4. Throughout the time of this appeal, and before, attorney Attig has never disclosed any of the physical locations of the offices of his law firm. This is due to a desire to ensure that employees and/or contractees of the firm, many of whom work alone, have a secure work environment. In representing a community that, unfortunately, all-too-often suffers from destabilizing mental health conditions, many of which go unnoticed, undiagnosed and/or untreated, it is not uncommon for the firm, its employees, and its contractees to receive death threats and other threats of violence from veterans who were declined representation or who have confused our firm with others that have declined them. Some have threatened to "blow up our offices" or to "come after" our employees. In August 2015, a mentally ill combat veteran told an employee of my firm he intended to "...find and kill" the

employee. A similar scenario occurred in January 2017. By not disclosing our physical office locations, or the names and identities of our paralegal and clerical workers, the firm significantly reduces the likelihood that this will ever happen, protects the safety of its employees and contractees, and reduces the overhead costs of ensuring against such catastrophic occurrences. Since there is no federal or state paralegal license, identifying the names of individuals who performed work that is paralegal in nature does not tend to prove or disprove the reasonableness of the hourly rate used to bill their time. Additionally, there is no business purpose for disclosing the physical addresses of my firm's offices to the Court: my firm heavily relies on web and cloud-based technology to interact with clients who often live hundreds, or thousands, of miles from my firm's offices and who never travel for a face to face meeting relying instead on modern technological tools.

5. Attorney work on this appeal was performed exclusively in the Little Rock, Arkansas, office of the undersigned's firm. The hours billed to his appeal were time reasonably expended and hours reasonably billed. I exercised my billing discretion in 3 "Tiers".
6. First, in Tier I, I reviewed individual line item entries and daily billing totals. I have considered and eliminated all time I believe was excessive or redundant; administrative in nature; time that benefitted the firm or other clients beyond the instant case; time that was repetitive, duplicative, or redundant; time billed for clerical tasks and tasks I would not bill to a private client; tasks with excessive hours and/or days on which hours spent were unreasonable; unproductive or unnecessary hours; etc. After reviewing all individual line-item time entries on the invoice, and the total daily amount billed, I eliminated or reduced the overall fee by eliminating: a) 3.5 hours of paralegal time (\$574.00); and, b) 3.6 hours of attorney Attig's time (\$719.42).
7. Second, in Tier II, I reviewed the total hours expended on the case in distinct phases of this appeal. I considered whether the total amount billed in each distinct phase of the appeal was unreasonable, excessive or otherwise justified a reduction. I considered whether the total amount billed in each distinct phase of the appeal was unreasonable, excessive or otherwise justified a reduction I also considered the total spent for all employees in each distinct phase of this appeal:
 - A) File & Docket (from first contact by the client until the matter was docketed at the Court);
 - B) Record Review (from docketing at the Court until the conclusion of record disputes or the record dispute time period);
 - C) Rule 33 (from the conclusion of the time to dispute the record through the final Rule 33 Conference

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- D) JMR/Judgment Phase (from the issuance of the Rule 33 “Conference Held” Notice through the issuance of the Court’s mandate on a joint motion to remand); and,
- E) Original EAJA Fee Petition (from the date of issuance of the Court’s decision through the filing of the original EAJA Petition). After reviewing this time and comparing it to the facts, issues and law in the case, and the results achieved for the client, I believe that the remaining time spent in each phase of this appeal was reasonably expended and/or billed, except as noted in Paragraphs 8 and 9, below.

After reviewing this time and comparing it to the facts, issues and law in the case, and the results achieved for the client, I believe that the remaining time spent in each phase of this appeal was reasonably expended and/or billed, except as noted in Paragraphs 8 and 9, below.

- 8. In the course of conducting my “Tier II” billing discretion, I considered the total time spent by an attorney and paralegals for a dispute of the RBA and an attempt to supplement the RBA: 0.4 hours of paralegal time (\$65.60), and 23.2 hours of attorney time (\$4,636.29), for a total of \$4,701.89. I considered that while the RBA dispute was not successful, at the time it was raised, the decision of the Federal Circuit in the matter of *Acree* had not yet issued. I considered that while the OGC offered a JMR in the middle of the record dispute, that JMR did not cover the appellant’s argument that there was error in the BVA’s denial of an earlier effective date. I considered that after Appellant lost the Rule 10 dispute, the OGC amended its JMR to include a remand of the effective date issue. Even though the dispute was not successful, it was still time reasonably expended, necessary and productive of the outcome. However, because it was not resolved in Appellant’s favor, I exercised my billing discretion to reduce the total time spent on the record dispute by 50%: this equates to a reduction of .2 hrs of paralegal time (\$32.80) and a reduction of 11.6 hours of attorney time (\$2,350.95), for a total reduction of \$2,383.75.
- 9. In the course of conducting my “Tier II” billing discretion, I considered the total time spent on the Record Review phase. I believe that the time expended, and the time billed, during this particular phase is reasonable. I considered the following factors:
 - A) I considered that my firm reviewed an 8 page BVA decision, a 924 page RBA and a 1,059 page C-File produced by the VA Record Management Center (RMC) in December 2017 (total of 1,983 pages), with both documents identified by different parts of the Agency as the record before the BVA at the time of its decision.

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- B) A thorough, complete and reliable record review of 2 files totaling nearly 1,983 pages was needed in order to verify that we not only had a proper record for the Court to review in this case, and complied with Rule 10, but also to ensure that I competently and diligently identified all potential errors of law and fact, identified the claims and appeals timelines for each issue that would be raised before the Court, and could present those errors in a clear and cogent statement of issues to ensure the greatest likelihood of a remand without the need for a brief.
- C) I considered that reviewing over 1,983 pages of records took only 19.1 hours of paralegal time, as well as additional hours of time by a supervisory attorney – time that was not billed – to ensure the record review was done as quickly, efficiently and accurately as possible to avoid repeat reviews and “double-checks”.
- D) Paralegals under my direct supervision worked to index, analyze, compare and identify potential legal ramifications of thousands of pages in disparity between the BVA, the Secretary and OGC’s inconsistent representation of the contents of the C-Files and the RBA produced in these proceedings. The pages in each file were not a perfect overlap - many of the pages that appeared in one file did not appear in another file, and in some cases similar documents were not identical or were different versions. Resolving this disparity between what the Secretary’s “left hand” represented before the court as the RBA and what his “right hand” asserted was the contents of the C-File at the time of the BVA decision in a FOIA response, and then assessing the legal implications to our client and to this appeal is a critical legal task and not clerical in nature, and is necessary to achieve the results obtained. To have ignored this disparity, or to have trusted it to untrained clerical workers, would require me to disregard my duties of loyalty and competence to my client, and to “cut corners” on my duty of candor to the tribunal.
- E) I exercised my billing discretion in reviewing the hours spent in this phase of the appeal to ensure the least possible time was billed at the lowest rates possible.
- F) I minimized the time by not billing for any time spent directly supervising paralegals in the document review process rather than expending and billing time at my higher attorney hourly rate.

- G) I required the paralegals to use an identical process and workflow to eliminate any wasted time.
- H) I reduced the actual amount of each paralegal's time billed in this task to reflect a rate of approximately 105 pages/hr, to account for any time on this task that might have been clerical but was non-segregable from the recorded time spent.
- I) I ensured the rates billed for time spent by individuals performing record review was consistent with amounts the Secretary has agreed to, and what this court has previously granted, in other cases.
- J) I considered that only 2 issues were on appeal, and that the JMR was granted on both of those issues (effective date and extra-schedular hearing loss).
- K) I considered that while the full record review was necessary to comply with Rule 10, the greatest value came from the factual summaries and citations to the record generated in the review.
- L) Although more than one individual was used for the record reviews in this case, I considered that the total and unreduced time spent (i.e., 19.1 hours) is the equivalent of having one worker spend approximately a half a week working full-time on no other work besides reviewing the record in this appeal.
- M) In light of the above, and solely for the purpose of attempting to avoid protracted EAJA litigation by motivating the Secretary to resolve this matter without need for the use of judicial resources to determine the reasonableness of fees, and/or the need for supplemental fee petitions, I believe the total paralegal time spent reviewing the record in this case is plausible, reasonable, necessary, and productive of the results achieved, and have made no reduction to the total amount of Paralegal time spent in this phase (19.1 hours).
- N) I contend the full amount of attorney and paralegal time billed for record review is reasonable and necessary to achieve the results obtained; should the Court reduce or reject this billed time below the reduced amounts sought, it effectively penalizes appellant for his attorney's diligence in ensuring the record before the agency was accurate and complete, and scrutinized carefully to provide the best possible outcome for the client.

- O) Billing 19.1 hours of time by paralegals performing record review of a 1,983 page record equates to a page rate of 104 pages per hour, which has not been found unreasonable by the Court (to my knowledge). Even if my firm spent all 19.1 hours reviewing only the RBA – an approach to record review that is not consistent with the Court’s direction in Rule 10 – the resulting rate of 48 pages per hour of record review is within the range that has been approved by the Court as reasonable.

10. Third, in Tier III, I assessed the reasonableness of the overall amount billed for the entirety of the case, considered the reductions identified above, and compared the value of the total amount billed to the outcome achieved for the client. I considered that in the agreement to remand, appellant received remand on all but one of the issues he sought in the appeal. None of the remaining time billed after the exercise of the prior tiers of my billing discretion was unreasonably expended, inadequately described or improperly billed. After assessing all of these considerations, I did not make any further across-the-board reduction to the remaining time billed by myself and individuals performing paralegal work, as the remainder of our time billed is reasonable, necessary, and productive of an ideal outcome for the client.

11. Itemized Hours and costs follow in the table below:

** Total Times on the billing invoice in Paragraph 11 are inclusive of Tier I reductions, but not Tier 2 and 3 reductions.*

DATE	PERSON	DESCRIPTION	TIME
7/5/2017	CA	Schedule consult with attorney gather answers to questions from atty decision review (.2) [In exercise of billing discretion, reduce to .1 to account for time that is clerical in nature]	0.1
7/24/2017	PL	Initial Intake interview, receive and Upload docs and audio file to PNC file (.2)	0.2
7/25/2017	CA	Review and break-down 8 page BVA decision to ascertain critical facts and law affecting decision (.3), identify possible deep issues for review, and evaluate risk (.5); list legal issues potentially to be raised and prioritize in order of importance and rank by likely remedy (.2); questions and notes to discuss with client when discussing pros/cons of court appeal (.2); listen to 39 minute audio	2.1

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		recording and notes to file re same notes to staff to create file and open case for consult (.9)	
7/26/2017	CA	discussion with client regarding portions of BVA Decision relating to possible CAVC appeal including distinguish between BVA and CAVC, impact of standard of review on his appeal, educate on legal strategy at court, process at court, timeline, and range of outcomes (.7); notes to file following consultation, direct staff to onboard client and schedule filing of appeal (.2)	0.9
8/17/2017	PL	Draft onboarding docs: CAVC Form 1, 3, 4, fee agreement, privacy act waivers, other supplemental authority and regulatory/ethical compliance data, deliver same to client; update file w/client info (.5) [In interest of billing discretion, reduced to .3 to account for any portions that might be clerical in nature]	0.3
8/28/2017	CA	Call with client to go over terms of fee agreement. (1.2) [Client had numerous questions, requiring detailed explanations, and while full amount of time is reasonably billed, in exercise of billing discretion in attempt to avoid dispute over EAJA fees, reduced time on this billing entry by 50%]	0.6
9/11/2017	CA	Review and sign representational and appeal documents (.1)	0.1
9/14/2017	PL	FOIA Request for C-File; upload documents and calendar filing deadlines (.5) [In exercise of billing discretion, reduce to 0 as administrative/clerical]	0.0
10/20/2017	PL	ECF File NOA, Appellant Attorney Designation, fee agreement with CAVC (.2) [In exercise of billing discretion, reduced rate to paralegal rate because work was paralegal in nature despite being performed by law firm partner] [In exercise of billing discretion, reduced to .1 hours]	0.1
11/21/2017	PL	review ECF BVA decision, compare to copy sent by client for accuracy and verification (.3) [In exercise of Billing Discretion, reduce to .2 hours to account for clerical portions of work]	0.2

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12/4/2017	PL	draft and serve FOIA Appeal for failure to produce C-File (.3); upload documents and calendar filing deadlines (.2) [In exercise of billing discretion, reduce to .3 to account for any portion of time that might be clerical in nature]	0.3
12/11/2017	PL	Receive ECF Notice OGC Appearance; upload to file and update case file and notes (.1) [In exercise of billing discretion, reduce to 0.0 hours to account for portion that is clerical in nature, and then reduce to 0 because reduced amount is below .1 hour]	0.0
12/11/2017	PL	Receive and review C-File received from RMC, schedule paralegal for review (.2) [In exercise of Billing Discretion, reduce to .1 hours to account for clerical portions of work]	0.1
12/18/2017	PL	confer on extension for RBA service (.1); draft motion for attorney review (.2) [In exercise of billing discretion, reduce by .1 to account for portion of time spent in task that might be considered clerical]	0.1
12/18/2017	PL	Review ECF RBA Notice order, schedule paralegal for RBA review (.2) [In exercise of Billing Discretion, reduce to .1 hours to account for clerical portions of work]	0.1
12/21/2017	PL	file motion for RBA dispute extension (.1) [In exercise of billing discretion, reduce to 0]	0.0
12/21/2017	PL	ECF: Court Order granting RBA Service Extension (.1) [In exercise of billing discretion, reduce to 0 hours]	0.0
12/29/2017	PL	Drafted letter to client; forwarded RBA and C-File on CD with instructions for him for review and what is needed in his review to facilitate/prosecute appeal. (.2) [In exercise of Billing Discretion, reduce to .1 hours to account for clerical portions of work]	0.1

1/15/2018	PL	Review and organize copy of December 2017 C-File from RMC (1,059 pp total) (pages 1 to 315): segregate, label, tag, sort and summarize claims related documents, SMRs, post-service medical records, military records, court documents, prepare general factual summary of same, including chronology, legal issues and theories (3.0)	3.0
1/15/2018	PL	Review and organize copy of December 2017 C-File from RMC (1,059 pp total) (pages 316 to 630): segregate, label, tag, sort and summarize claims related documents, SMRs, post-service medical records, military records, court documents, prepare general factual summary of same, including chronology, legal issues and theories (3.0)	3.0
1/16/2018	PL	Review and organize copy of December 2017 C-File from RMC (1,059 pp total) (pages 631 to 945): segregate, label, tag, sort and summarize claims related documents, SMRs, post-service medical records, military records, court documents, prepare general factual summary of same, including chronology, legal issues and theories (3.0)	3.0
1/16/2018	PL	Review and organize copy of December 2017 C-File from RMC (1,059 pp total) (pages 946 to 1,059): segregate, label, tag, sort and summarize claims related documents, SMRs, post-service medical records, military records, court documents, prepare general factual summary of same, including chronology, legal issues and theories (1.3)	1.3
2/5/2018	PL	Review and organize copy of RBA from OGC (924 pp total) (pages 1 to 315): segregate, label, tag, sort and summarize claims related documents, SMRs, post-service medical records, military records, court documents, prepare general factual summary of same, including chronology, legal issues and theories (3.0)	3.0
2/6/2018	PL	Review and organize copy of RBA from OGC (924 pp total)(pages 316 to 630): segregate, label, tag, sort and summarize claims related documents, SMRs, post-service medical records, military records, court documents, prepare general factual summary of same, including chronology, legal issues and theories (3.0)	3.0
2/6/2018	PL	Review and organize copy of RBA from OGC (924 pp total) (pages 631 to 924): segregate, label, tag, sort and summarize claims related documents, SMRs, post-service medical records, military records, court documents, prepare general factual summary of same, including chronology, legal issues and theories (2.8)	2.8

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2/12/2018	CA	Compare indices from reviews of RBA and C-File to identify 125 page difference (.3); outline key distinctions for each document noted as missing from RBA with potential material impact, verify same due to significance (.2); compare file lists in both cases to issues identified to verify that all documents in C-File pertaining to issues are also in RBA (.3); review pages in C-File flagged by paralegal for issues with legibility, completeness, etc (.1) [In exercise of billing discretion, reduce time by .2 to account for clerical tasks related to the task of comparing 2 indices).	0.7
2/21/2018	CA	Confer on record dispute and requesting 14-day stay while the parties attempt to resolve the dispute, draft	5.5
3/5/2018	CA	Research case law for record dispute, organize and outline core argument (2.2)	2.2
3/6/2018	CA	Draft motion to supplement the record, identify exhibits for PL to assemble	2.8
3/7/2018	CA	Edit draft of motion to supplement the record, improve structure and organization, proof-read, copy-edit (1.6)	1.6
3/7/2018	CA	receive and read email from OGC declining to supplement RBA (.1)	0.1
3/8/2018	PL	file motion to supplement (.1)	0.1
3/9/2018	PL	Make revisions to conform document per attorney instructions, and refile Motion to supplement the RBA (.5) [In exercise of billing discretion, reduce to 0]	0.0
4/3/2018	PL	Receive ECF Notice OGC Appearance; upload to file and update case file and notes (.1) [In exercise of billing discretion, reduce to 0.0 hours to account for portion that is clerical in nature, and then reduce to 0 because reduced amount is below .1 hour]	0.0
4/3/2018	PL	ECF: receive, file, calendar deadlines and alert attorney re OGC response to Rule 10 dispute (.1)	0.1
4/6/2018	CA	Read OGC response to rule 10 dispute, taking notes on salient points in response, calendar time to respond, confer with CLS and OGC on date for Rule 10; read CLS email regarding time to reply to OGC 4/3/2018 response (1.1)	1.1
4/13/2018	CA	Draft response to Secretary's Rule 10 impasse notice (2.8)	2.8

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4/16/2018	CA	Organize draft response, improve organization of argument, proofread and edit (1.1)	1.1
4/17/2018	CA	serve copy of recording on secretary's attorneys and file response to ECF (.1); final revisions to response on secretary's notice of impasse (.7) [In exercise of billing discretion, reduced ECF filing time and service of recording to attorneys to 0; time spent was paralegal in nature and below 0.1 hour total time]	0.7
5/10/2018	CA	Rule 10 conference (.2) [Time spent on Rule 10 conference was not contemporaneously recorded, due to a glitch in timing software; amount of .2 hours is below the actual time spent as estimated from details in notes]	0.2
6/19/2018	CA	Read OGC offer of JMR only on the extra-schedular withdrawal/ <i>Acree</i> issue (OGC did not offer remand on effective date issue, and draft JMR required Appellant to abandon appeal of that issue); respond to OGC re same (.2)	0.2
6/21/2018	PL	ECF: File and alert attorney to Secretary's supplemental response (.1)	0.1
6/21/2018	CA	read and quick notes on secretary's response in Rule 10 dispute (.5)	0.5
7/17/2018	CA	Draft appellant's reply to Court's May 22, 2018, order (2.8)	2.8
7/19/2018	CA	Review, organize and edit Response to RBA Dispute Order (.7)	0.7
7/20/2018	CA	final edits, proofread and direct filing of response to May 22, 2018 Court order (.6)	0.6
9/4/2018	PL	ECF: upload Judge Order DENYING Motion to Supplement RBA (Bartley) (.1)	0.1
9/4/2018	CA	Read and notes for client, regarding denial of motion to supplement RBA (.3); research preservation of assertion of error in procedural decision should OGC not offer a JMR (.4) [In interest of billing discretion, reduce by .4 hours]	0.3
9/4/2018	PL	ECF File and Calendar deadlines associated with 60 day Briefing notice (.1) [In exercise of billing discretion, reduced to 0 hours]	0.0

9/18/2018	CA	read and respond to OGC offer for full JMR on all appealed issues (.1)	0.1
9/19/2018	PL	ECF File and Calendar deadlines associated with Rescheduling Rule 33 notice; alert attorney of conflicts and scheduling issues and need to reschedule based on same (.2) [In exercise of billing discretion, reduced to 0]	0.0
9/19/2018	CA	T/C with client to explain offer of JMR, implications on remand, implications if not accepted, legal advice re same (.5)	0.5
9/19/2018	CA	Communicate acceptance of JMR (.1)	0.1
9/21/2018	CA	Review JMR draft, provide edits, provide wet signature for filing (.2)	0.2
9/24/2018	CA	Emailed JMR to client with status update (.1)	0.1
9/25/2018	PL	ECF: Rvw email from Court cancelling rule 33 conference and notify attorney re same (.1) [In interest of billing discretion, reduce time spent to 0]	0.0
10/1/2018	PL	ECF: Rvw Judgment and add to client case file and calendar associated deadlines (.1)	0.1
10/1/2018	PL	ECF: Rvw Mandate and add to client case file and verify deadlines (.1) [In exercise of billing discretion, reduce to 0]	0.0
10/25/2018	PL	Prepare attorney for EAJA filing, download time records for case; research and calculate CPI-U/EAJA rate based on today's current September rates; draft motion template for attorney for eaja petition, update and organize billing affidavits, verify time, update case law as needed, deliver same to attorney for review (.9) [In exercise of billing discretion, reduce by .2 hours to account for any portion of this task that could be considered clerical in nature]	0.7
10/26/2018	CA	Exercise Billing discretion by reviewing each individual entry, and reducing individual entries that are not properly billed to client, where the # of hours for a task is excessive, where the # of hours on a day is unreasonable, plus unnecessary, duplicative and other reasons to exclude (1.5)	0.7

		[In exercise of Billing Discretion, reduce to .7 hours to account for portions of billing discretion that is redundant of original billing]	
10/29/2018	CA	Assemble facts, specific arguments as to reasonableness - individual entries, review for reasonableness of hours & total fee by phase of appeal, explain exercise of billing discretion - into template of brief, review and edit same (1.6) [In exercise of Billing Discretion, reduce to .8 hours due to time on work that would improve firm's process in other matters, and due to time that was spent on computing firm internal metrics related to billing affidavit]	0.8
10/30/2018	PL	Edit petition for grammar, fact-check calculations, assemble exhibits and prepare for filing (.7) [In exercise of billing discretion, reduce by .3 hours to account for clerical tasks]	0.4
10/31/2018	CA	Final review of pleading for coherence/consistency, notes of final edits/changes, direct paralegal to file petition (.9) [In exercise of billing discretion, reduce by .4 for time that was either clerical, redundant or unnecessary]	0.5
10/31/2018	CA	Filing EAJA petition; calendar deadlines; upload to case file (.3) [In exercise of billing discretion, reduced to .1 hours, to account for portions that may be clerical]	0.1
TOTAL ATTY TIME (CA)			30.8
TOTAL PARALEGAL (PL) TIME			22.2
TOTAL TIME			53.0

12. Based on the above table of hours, and reduction calculations, the following table reflects the total reductions by Tier of Discretion:

Total Amount Billed	\$ 11,089.30
- Tier I Reductions	(\$ 1,293.42)
- Tier II Reductions	(\$ 2,350.94)
Billed After Reductions	\$ \$7,444.93

Ziminsky v. Wilkie, CAVC #17-3807

Appendix to Original EAJA Petition

13. Based on the above table of hours, the following calculations reflect the total hours spent by employee, the total time reduced by discretion Tier, and the total remaining amounts sought after all billing discretion reductions.

ATTORNEY Attig, at \$199.84/hr:

Total Hrs Billed	34.4 hours	\$ 6,874.50
Tier I Reduction	(3.6 hours)	(\$ 719.42)
Tier II Reduction	(11.6 hours)	(\$ 2,318.14)
Total Post Reduction	19.2 hours	\$ 3,836.93

PARALEGALS, at \$164/hr

Total Hrs Billed	25.7 hours	\$ \$4,214.80
Tier I Reduction	(3.5 hours)	(\$ 574.00)
Tier II Reduction	(.2 hours)	(\$ 32.80)
Total Post Reduction	22.0 hours	\$ 3,608.00

TOTAL TIME SOUGHT 41.2 hours \$ 7,444.93

Originally Executed on October 31, 2018.

By: /s/ Chris Attig
Chris Attig, Attorney
P.O. Box 250724
Little Rock, Arkansas 72225
Phone: (866) 627 – 7764

USAO ATTORNEY'S FEES MATRIX — 2015-2018

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
31+ years	568	581	602
21-30 years	530	543	563
16-20 years	504	516	536
11-15 years	455	465	483
8-10 years	386	395	410
6-7 years	332	339	352
4-5 years	325	332	346
2-3 years	315	322	334
Less than 2 years	284	291	302
Paralegals & Law Clerks	154	157	164

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-

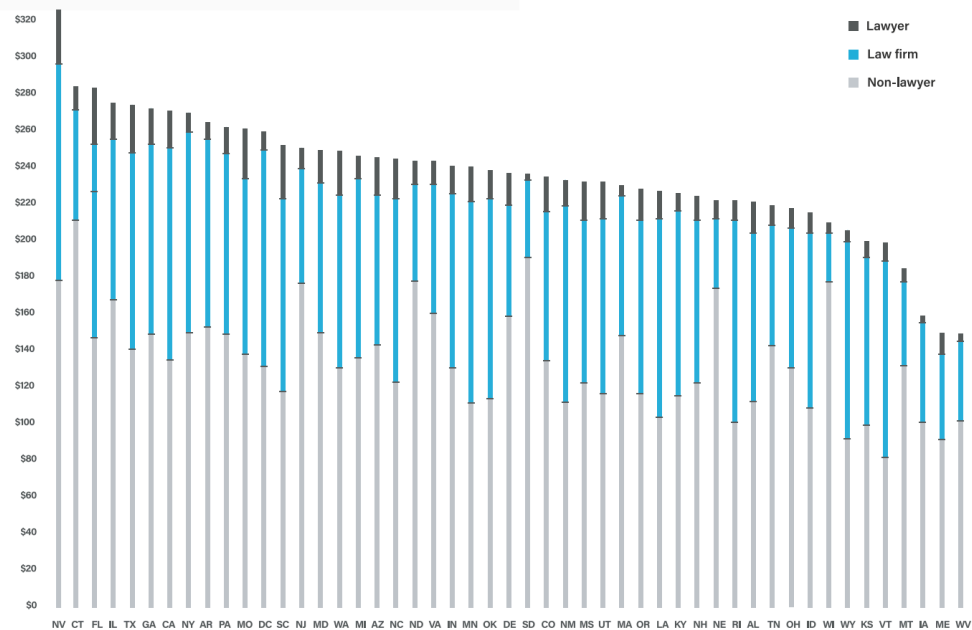
Legal Services index measures. Although it is a national index, and not a local one, *cf. Eley v. District of Columbia*, 793 F.3d 97, 102 (D.C. Cir. 2015) (noting criticism of national inflation index), the PPI-OL index has historically been generous relative to other possibly applicable inflation indexes, 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. Because the USAO rates for the years 2014-15 and earlier have been generally accepted as reasonable by courts in the District of Columbia, see note 9 below, the USAO rates for those years will remain the same as previously published on the USAO's public website. That is, the USAO rates for years prior to and including 2014-15 remain based on the prior methodology, *i.e.*, the original *Laffey* Matrix updated by the CPI-U for the Washington-Baltimore area. See *Citizens for Responsibility & Ethics in Washington v. Dep't of Justice*, --- F. Supp. 3d ---, 2015 WL 6529371 (D.D.C. 2015) and Declaration of Dr. Laura A. Malowane filed therein on Sept. 22, 2015 (Civ. Action No. 12-1491, ECF No. 46-1) (confirming that the USAO rates for 2014-15 computed using prior methodology are reasonable).
5. Although the USAO will not issue recalculated *Laffey* Matrices for past years using the new methodology, it will not oppose the use of that methodology (if properly applied) to calculate reasonable attorney's fees under applicable fee-shifting statutes for periods prior to June 2015, provided that methodology is used consistently to calculate the entire fee amount. Similarly, although the USAO will no longer issue an updated *Laffey* Matrix computed using the prior methodology, it will not oppose the use of the prior methodology (if properly applied) to calculate reasonable attorney's fees under applicable fee-shifting statutes for periods after May 2015, provided that methodology is used consistently to calculate the entire fee amount.
6. 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.
7. 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).
8. The USAO anticipates periodically revising the above matrix if more recent reliable survey data becomes available, especially data specific to the D.C. market, and in the interim years updating the most recent survey data with the PPI-OL index, or a comparable index for the District of Columbia if such a locality-specific index becomes available.
9. 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 USAO 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). Most lower federal courts in the District of Columbia

have relied on the USAO's *Laffey* Matrix, rather than the so-called "*Salazar* Matrix" (also known as the "LSI Matrix" or the "Enhanced *Laffey* Matrix"), as the "benchmark for reasonable fees" in this jurisdiction. *Miller v. Holzmann*, 575 F. Supp. 2d 2, 18 n.29 (D.D.C. 2008) (quoting *Pleasants v. Ridge*, 424 F. Supp. 2d 67, 71 n.2 (D.D.C. 2006)); see, e.g., *Joaquin v. Friendship Pub. Charter Sch.*, 188 F. Supp. 3d 1 (D.D.C. 2016); *Prunty v. Vivendi*, 195 F. Supp. 3d 107 (D.D.C. 2016); *CREW v. U.S. Dep't of Justice*, 142 F. Supp. 3d 1 (D.D.C. 2015); *McAllister v. District of Columbia*, 21 F. Supp. 3d 94 (D.D.C. 2014); *Embassy of Fed. Republic of Nigeria v. Ugwuonye*, 297 F.R.D. 4, 15 (D.D.C. 2013); *Berke v. Bureau of Prisons*, 942 F. Supp. 2d 71, 77 (D.D.C. 2013); *Fisher v. Friendship Pub. Charter Sch.*, 880 F. Supp. 2d 149, 154-55 (D.D.C. 2012); *Sykes v. District of Columbia*, 870 F. Supp. 2d 86, 93-96 (D.D.C. 2012); *Heller v. District of Columbia*, 832 F. Supp. 2d 32, 40-49 (D.D.C. 2011); *Hayes v. D.C. Public Schools*, 815 F. Supp. 2d 134, 142-43 (D.D.C. 2011); *Queen Anne's Conservation Ass'n v. Dep't of State*, 800 F. Supp. 2d 195, 200-01 (D.D.C. 2011); *Woodland v. Viacom, Inc.*, 255 F.R.D. 278, 279-80 (D.D.C. 2008); *American Lands Alliance v. Norton*, 525 F. Supp. 2d 135, 148-50 (D.D.C. 2007). But see, e.g., *Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 13-15 (D.D.C. 2000). Since initial publication of the instant USAO Matrix in 2015, multiple courts similarly have employed the USAO Matrix rather than the *Salazar* Matrix for fees incurred since 2015. E.g., *Electronic Privacy Information Center v. United States Drug Enforcement Agency*, --- F. Supp. 3d ---, 2017 U.S. Dist. LEXIS 111175, at *17 (D.D.C. 2017) ("After examining the case law and the supporting evidence offered by both parties, the Court is persuaded that the updated USAO matrix, which covers billing rates from 2015 to 2017, is the most suitable choice here.") (requiring re-calculation of fees that applicant had computed according to *Salazar* Matrix); *Clemente v. FBI*, No. 08-1252 (BJR) (D.D.C. Mar. 24, 2017), slip op. at 9-10 (applying USAO Matrix, as it is "based on much more current data than the *Salazar* Matrix"). The USAO contends that the *Salazar* Matrix is fundamentally flawed, does not use the *Salazar* Matrix to determine whether fee awards under fee-shifting statutes are reasonable, and will not consent to pay hourly rates calculated with the methodology on which that matrix is based.

Real hourly rates by state: law firms, lawyers, non-lawyers

When comparing average billing rates to the estimated cost of living in each state, we can derive a "real" billable rate that reflects actual purchasing power.



LEGAL TRENDS REPORT 2017