

Exhibit C

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----- Original Message -----

Subject: RE: [EXTERNAL] RE: position on extension to respond to your

EAJA

From: "Schneider, Robert A. (OGC)" <Robert.Schneider2@va.gov>

Date: Fri, June 12, 2020 3:45 pm

To: "tgoffney@attorney4vets.com" <tgoffney@attorney4vets.com>



Oops – and I just noticed that you had additional comments after the question about Mary/Nicole.

For what it's worth, I'm not entirely sure where I got the impression that we offered a remand at the conference, but I trust, given your response, that that was not the case and have requested clarification from Nicole (Cottle). I do see that we filed a remand brief so I would hope we offered you a remand at some point before then, which could still make the reasonableness of the overall charge something we would raise should I be unable to convince the powers that be that we simply pay (that being said, without some decrease in the application due to the hotel rate, I suspect I will have a difficult time getting my office to agree, your below arguments notwithstanding).

As I hope I've made clear, this is not my decision to make (whether we file a contested response or not). If there is any wiggle room on your part, please let me know and I will do what I can to expedite this matter.

Robert Schneider, Esq.  
Appellate Attorney  
(202) 632-6988

Subject: RE: [EXTERNAL] RE: position on extension to respond to your EAJA  
From: <tgoffney@attorney4vets.com>  
Date: Fri, June 12, 2020 4:31 pm  
To: "Schneider, Robert A. (OGC)" <Robert.Schneider2@va.gov>

No. No remand offer whatsoever.

I was just as surprised as you to see a remand brief. Prior to the filing of that GC brief, all GC wanted to talk about was PTSD as a liberalizing law. What obviously happened is that Vargas read my brief, knew that the liberalizing law argument would not fly because that issue was res judicata in a prior appeal,; then she decided on her own to jump on the band wagon regarding the analogous rating argument that I had made in my brief.

Prior to filing her brief, I did not hear a word from Vargas after the litany of emails I documented in my prior email, except for her request for a 45 day extension to file GC's brief.

And you've got to realize this. Even after all briefing, the court STILL decided that they wanted us before a panel. Clearly there was something more that they wanted to hear. And they still scheduled OA. So, your reasonableness theory wouldn't hold especially given that fact. I did not ask for OA, this was done by the court on its own accord. So, everything done after the GC's responsive brief is certainly reasonable. Are you suggesting that I should not have filed a RB? Ridiculous! Not in my world! I don't believe in that.

In addition, after the court ordered OA, both sides wanted clarification as to the issues, so we filed a joint motion for clarification. Not so much help from the court there. I recall that they only said something like, "be prepared to discuss arguments A&B of appellant's brief". Or something along those lines. Of course, this left us wide-open to any and everything. So, extensive research and preparation on a wide range of "anticipatory issues" had to be researched. They actually left us with a guessing game as to where they wanted to go on the issues, ie., for example retro-activity, plain language of a regulation, temporal reach, etc. (all the issues raised in my 9-18-19 supplemental authorities.) This was hard!

Moreover, you seem to believe that appellant's counsel must agree to "any old offer" for a remand, whether the offer makes sense going back below or not. **You are absolutely incorrect on that as well.** Often times, I get these little superficial offers for remand which will do nothing more than delay the case for another six months before returning to court, because nothing substantive is accomplished below due to the superficial JMR. I have an ethical responsibility to my client to only accept a remand if it makes sense. And 99% of my JMR's go through very painful counter and counter-counter versions. In many ways a JMR is much more difficult than briefing. No court is going to fault me under Hensley for jealously and ethically representing my client if I decide that the JMR is not helpful and decide that it is in my client's best interest to go to briefing.

I still do not understand what your supervisors expect me to do with the hotel charges. Sleep on the street next time? As I stated earlier, if the government can negotiate a much lower rate, then they should step up and do so. Otherwise, I have no other remedies. I explained in my application that I have reduced the overall fees entitled to by 15%. Since, as you concede, the overall fee for an OA case are not per se

unreasonable, then you should advise that they transfer an adequate amount of those deductions (ie. \$3,852.00) to assuage any concerns above their "government rate" for the hotel charges.

Now more than 4 hours expended on this case today so far! Supplemental EAJA?

Family is fairing okay. Mom is very sad, as she was very close to my aunt. Thanks for your concern.

TRG