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April 14, 2021

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530-0001

Dear Attorney General Garland,

It appears that there is light at the end of the COVID-19 pandemic tunnel for the United States. If there is a “silver lining” for the Department of Justice to the tragedy of this highly contagious and life threatening disease, it has been, for the most part, that Assistant United States Attorneys (AUSA) working with their federal, state, and local law enforcement partners, as well as AUSAs on the civil side of the house, have been able to very successfully get the job done during these past 14 months. AUSAs have been able to do so via computer technology and ZOOM virtual proceedings. But for trials and grand juries, AUSAs have very effectively carried out their duties and responsibilities.

Every AUSA recognizes that there will be times when their in-office presence is required for such things as trials, grand jury, witness interviews, sentencing, pre-trial motions, Circuit Court arguments, etc. On the other hand, much of what an AUSA does, such as legal research, drafting of pleadings, writing appellate briefs, and communicating via email and telephone, can be done very successfully remotely, as has been proven during the pandemic. We strongly believe that practice should be the “new normal” when it is safe to return to our offices.

While teleworking may not be desired by every AUSA, every AUSA should have the option available to him/her. Congress passed and the President signed into law the “Telework Enhancement Act of 2010,” which requires each executive agency to establish and implement a policy under which employees are authorized to telework. On July 20, 2012, the Department of Justice issued its telework policy statement consisting of 28 pages. That document defines “telework” as “a work arrangement that allows an employee to preform work, during any part of regular, paid hours, at an approved alternative worksite (e.g., home, telework center).” (“DOJ Policy Statement – Telework”, at p.2, July 20, 2012). (hereinafter “Policy Statement”). The Policy Statement details the types of approved telework (p.7), eligibility (p.7), telework agreements (p.8-9), and “Denying or Terminating a Telework Agreement” (p.9).

“Denial or Termination Decisions” must be made by a supervisor and must be based “. . . on work-related reasons, such as . . . – 1) Employee ineligibility; 2) Position incompatibility; 3) Decline in employee performance; 4) Employee misconduct; 5) Employee appointment or position status (e.g. trainees or entry-

level employees); 6) Safety issues or suspected hazardous materials in the telework location; 7) Adverse impact on the operations of the office, including costs associated with potential change of duty station; and 8) Failure to adhere to all the terms of the telework agreement.” *Id.* at p. 9.

The past 14 months has demonstrated that much, if not most, of what AUSAs are required to do can be done via telework. It is clearly time to recognize a “new normal” and not resort to the old traditional practice of requiring an AUSA to work in an office setting five days a week between 9:00 a.m. and 5:30 p.m.¹ . As the Policy Statement points out, teleworking can: “1) serve as an effective recruitment and retention strategy; 2) be a useful strategy to improve COOP to help ensure that essential Federal functions continue during emergency situations; 3) enhance DOJ efforts to employ and accommodate people with disabilities; and 4) create cost saving by decreasing the need for office space and parking facilities, and by reducing transportation costs, including costs associated with payment of transit subsidies.” *Id.* at 6 (emphasis added). On a more personal level, teleworking can eliminate commuting time and costs, increase time with family, create a better working environment, eliminate in office distractions, and greatly increase “esprit de corps,” all of which has been well proven over the past many months.

While not every AUSA will want to telework, we believe all AUSAs should have the option to telework at least two days a week as long as it does not conflict with their duties and responsibilities which often will require them to be in the office, courtroom, grand jury, etc. If an AUSA qualifies per the existing Policy Statement, he/she should be permitted to telework at least two days a week regardless of which district he/she serves. NAAUSA, through its Officers, Board of Directors, and Delegates is highly confident that what we are proposing is strongly supported by the AUSA community, and is committed to its implementation. Therefore, we would like to meet with you to discuss this proposal, as well as the items we raised with you in our recent congratulatory letter and request to meet. We look forward to such a meeting in the near future.

Respectfully yours,



Lawrence. J. Leiser, President
NAAUSA

CC: Monty Wilkinson, Director, Executive Office for U.S. Attorneys (EOUSA)

¹ As you know, most AUSAs work well beyond a 40-hour week.