

August 15, 2017

The Honorable Jeff B. Sessions, III
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Sessions:

On May 31, 2017, we wrote you concerning the significant and pervasive inequity in pay that exists between DOJ Trial Attorneys, who are paid pursuant to the General Schedule (“GS scale”), and Assistant United States Attorneys, who are paid pursuant to the Administratively Determined pay schedule (“AD scale”). We write now to provide you with a more detailed explanation of the inequities between these two pay scales, which have resulted in AUSAs receiving significantly lower compensation than their counterparts at DOJ, particularly for those AUSAs at the junior to mid-level years of experience.

Any discussion of equity in pay between DOJ Trial Attorneys and AUSAs must begin with the recognition that AUSAs are performing work that is of equal importance and complexity with work performed by DOJ attorneys. We know that you, as a former career prosecutor and U.S. Attorney, understand firsthand that AUSAs are the Nation’s “frontline” litigators, who handle the overwhelming majority of federal criminal and civil litigation on behalf of the United States government. Accordingly, we know that you understand and appreciate the importance of AUSAs receiving equal pay for equal work.

The Inequities between the GS Scale and the AD Scale

There are multiple reasons for the GS scale resulting in overall higher pay for DOJ Trial Attorneys when compared with pay for AUSAs under the AD pay scale. These include the following differences between the two systems:

*** Step increases under the GS scale are non-discretionary when performance is at least “satisfactory,” while pay increases under the AD scale are almost exclusively within the discretion of each individual U.S. Attorney.** The result is that AUSA pay has lagged behind pay for DOJ Trial Attorneys, particularly as periods of budget austerity have occurred with greater frequency. This has resulted in more frequent pay “freezes” for AUSAs, when no such absolute pay freeze applies to DOJ attorneys paid under the GS scale. Similarly, while under the GS scale, larger pay increases are available for superior performers, such as within grade pay increases and increases in pay grade, the U.S. Attorneys have almost complete discretion to determine the amount of any pay raise to award, if any, even to superior performers. This has often resulted in lower pay raises for

superior performing AUSAs when compared to superior performing DOJ attorneys, usually because of budget constraints.

*** The structure of the GS scale places AUSAs at a significant disadvantage compared to DOJ attorneys.** The AD pay scale contains additional pay levels, compared to the GS scale along with broader pay ranges. This results in AUSAs receiving lower salaries for longer periods as compared to DOJ attorneys paid under the GS scale. The GS pay scale has sequential and discrete salaries, which are on average higher than salaries under the AD scale. Virtually all DOJ attorneys are hired as GS-12s (\$62,722), and become GS-15s (\$103,672) in 3 to 4 years after appointment. Many AUSAs are hired as AD-21s (\$52,329) and remain at that pay level for several years before moving to AD-23 (\$56,225). We have attached copies of the GS scale and the AD pay schedule.

*** The GS scale provides significantly higher pay for DOJ attorneys with the same experience as AUSAs.** As the attached AD pay chart demonstrates, an AUSA with 9 years of experience can be hired for as little as \$80,514. Compare that to the GS scale, which provides that a DOJ attorney with 9 years of experience would be paid at level GS-15, with a minimum salary of \$103,672, or over \$23,000 more than the minimum salary available for the AUSA with the same years of experience. In fact, AUSAs often have more experience than their counterparts at DOJ at the time they are hired, yet they can expect to be paid less money for longer periods of time.

At present, there are no guidelines for U.S. Attorneys to follow in awarding pay raises for AUSAs under the AD scale. This means that each of our 93 U.S. Attorneys are free to use any method they choose to determine if AUSAs in their office receive a raise, which AUSAs get raises, and the amount of the raise. This lack of objective criteria often leads to disparate treatment of similarly situated AUSAs within the same office, as well as across the country. This is both unfair and bad for morale.

Myths of the Benefits and Fairness of the AD Pay Scale

The following myths pervade the administration of the AD pay scale and have historically contributed to its abuse.

*** Myth: There is no disparity because the top paid DOJ Trial Attorneys make the same as the top paid AUSAs.**

The reality is that, while the salary levels at the top of the GS-15 pay scale and the top of the AD pay scale are essentially the same (AUSAs are paid \$100 less due to the pay cap), it is much harder for AUSAs to reach the higher levels of the AD scale as quickly as DOJ attorneys under the GS scale. In short, while AUSAs may potentially end up being paid the same amount as DOJ attorneys toward the end of their careers, the AUSA will never make up for the many years that he/she lagged behind. Factoring in the time value of money principle, AUSAs make far less than DOJ attorneys. Although EOUSA in 2016 has made a good first step and created a higher floor for salaries by making the starting salary for an AUSA under the AD scale the same as a starting DOJ Trial Attorney at GS 11, the pay disparity during the first several or more years still exists, and in fact increases over time.

Myth: U. S. Attorneys need the “flexibility” of the AD system to reward high performers and to punish low performers.

The notion that U.S. Attorneys would lose management flexibility under the GS system is simply not true. EOUSA claims that the benefit of the AD system is that it provides U.S. Attorneys the “flexibility” to reward those who perform well and refrain from rewarding those who do not. EOUSA contends that the GS system does not have the same “flexibility.” This claim is inaccurate. Under the GS scale, the various Section Chiefs have the flexibility to deny or reward performance. For example, under the GS scale, an attorney who performs unsatisfactorily is not eligible for a pay increase. Those who receive a “satisfactory” performance review, who are otherwise eligible to receive a pay increase based upon time-in-service, receive a step increase. Those attorneys who are superior performers and receive a performance rating of “outstanding,” can receive a within-grade step increase or a bump to the next grade. Accordingly, there is more than adequate flexibility to reward performance under the GS scale. The major difference is that under the GS scale, if an attorney performs at least at the “satisfactory” level, like all other GS government employees, that attorney receives at least some raise in pay. Under the AD scale, an AUSA, even a superior performer, may or may not get a pay raise depending on the particular U.S. Attorney’s budget resources and how he/she decides to allocate their funds. This, in part, is why AUSAs lag behind our colleagues at DOJ. The notion that U.S. Attorneys will lose management flexibility under the GS system is simply not true.

Myth: DOJ Trial Attorneys deserve more money because they have to travel around the country and try cases in unfamiliar settings.

NAAUSA has tremendous respect for our attorney colleagues at DOJ and the critical work they perform. It is also true that some litigators at DOJ are required to travel around the country and perform their duties in unfamiliar jurisdictions. However, those attorneys also receive “comp time” for their travel time, and the amount of travel can vary greatly from year to year and from attorney to attorney. It is also important to note that most attorneys at DOJ are not litigators and do not have to travel as part of their jobs. Accordingly, they typically do not face the same stresses that AUSAs deal with on a daily basis, including risks to their safety and that of their families and the increasing threat of specious claims of professional misconduct by an increasingly hostile judiciary and defense bar.

Proposed Solutions to Resolve Pay Inequity

NAAUSA believes that the only way to achieve true parity in pay for AUSAs is to convert AUSAs to the GS pay scale. Accordingly, we propose that for the FY 2019 budget, the Department of Justice convert AUSAs to the GS scale and request the funds from Congress to achieve this changeover on a permanent basis. In the shorter term, NAAUSA proposes the following modifications to the AD pay scale, and the manner in which it is administered, to reduce the inequity in pay:

- Narrow the pay bands under the AD scale to be more reflective of the GS scale;

- Eliminate the requirement that U.S. Attorneys obtain prior EOUSA approval to grant individual raises above \$10,000;
- Preclude the diversion of funds designated for U.S. Attorney's Offices to other DOJ programs.

In conclusion, the issue of equal pay for equal work is simply a matter of fairness. As the Nation's top law enforcement agency charged with applying and enforcing the law fairly and equitably to all of our citizens, it is unconscionable that the Department has permitted the current inequity in pay between AUSAs and DOJ attorneys to continue to persist. Allowing the inequity in pay to continue any longer serves to undermine the Department's credibility, not just as an employer that is supposed to uphold the principle of equal pay for equal work, but also as the guardian of fairness and equity to all in the eyes of the law.

Thank you for your consideration of NAAUSA's views on this topic and for your principled leadership of the Department.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lawrence J. Leiser".

Lawrence J. Leiser
President