

DECLARATION OF JOHN D. PIVEROTTO

STATE OF FLORIDA

§

COUNTY OF PALM BEACH

§

Pursuant to 28 U.S.C. 1746, I, JOHN D. PIVEROTTO, declare under penalty of perjury that the following is true and correct:

1. My name is John Drew Piverotto.
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

2/6/2018

Signature:



John D. Piverotto, 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. Three attorneys billed time to this case.
 - 2.1. Time entries which have "CA" in the "Attorney" column indicate the work was performed by attorney Chris Attig. Attorney Attig graduated from the University of Scranton in 1993, with a B.A. in History. Attorney Attig is a service-connected disabled veteran, and served as a Captain in the US Army Field Artillery, both on active duty and in the US Army Reserves and the US Army Individual Ready Reserve from May 1993 – September 2004, including assignment to both OCONUS and CONUS posts. Attorney Attig attended and graduated basic training at Ft. Knox, Kentucky; Officer Basic Training at Ft. Sill, Oklahoma; US Army Airborne Training at Fort Benning, GA. He attended US Army Ranger School in 1995, and in 1997 was selected to attend U.S. Army Special Forces Assessment and Selection (SFAS) at Ft. Bragg, NC. Attorney Attig graduated from South Texas College of Law (2003), and is licensed to practice law in Maryland (since 2003), Texas (since 2006), and Arkansas (application pending

since 2019). Attorney Attig spent one semester of law school at the University of Texas School of Law, while serving as a law clerk to Chief Justice Thomas Phillips of the State of Texas Supreme Court. Attorney Attig has practiced before U.S. Federal District Courts in the Northern and Eastern Districts of Texas, and is admitted to practice before Federal District Courts in the State of Arkansas. Attorney Attig has prepared and presented appeals before several VA Regional Offices and the Board of Veterans Appeals from 2007 to present. Attorney Attig has briefed and orally argued appeals on behalf of US Veterans before the Court of Appeals for Veterans Claims, the U.S. Court of Appeals for the Federal Circuit, and the U.S. Court of Appeals for the Fifth Circuit between 2008 and present. Attorney Attig is admitted to the Bar of the Supreme Court of the United States. Attorney Attig has handled a variety of cases in which he has billed private clients on an hourly basis, including but not limited to family law, employment law (for both employers and employees), appeals before the federal Merit Systems Protection Board (MSPB) and the Equal Employment Opportunity Commission (EEOC); these forums have ordered dozens of Federal Government agencies, including the Department of Veterans Affairs, to pay Attorney Attig hourly rates as high as \$375 - \$400 per hour for his appellate legal work between 2006 - 2010, pursuant to fee-shifting statutes that govern those federal tribunals. Attorney Attig is admitted to practice before the US Court of Veterans Appeals since September 2007, the United States Court of Appeals for the Federal Circuit since 2008 and has been an accredited VA Attorney since 2008. Attig serves on the Board of Directors for the National Organization of Veterans Advocates (2015 - present). Since 2018, Attorney Attig has served as the chair and co-chair of that organization's Amicus Committee, in which Attorney Attig has coordinated and developed NOVA's legal positions on issue before the U.S. Court of Appeals for Veterans Claims, the U.S. Federal Circuit Court of Appeals, and the United States Supreme Court. Attorney Attig assists in the drafting of amicus curiae briefs before the U.S. Court of Appeals for the Federal Circuit and the United States Supreme Court. Attorney Attig has published several paper and electronic books on the VA Claims Process and the law of

VA Claims. Attorney Attig provides continuing legal education to veterans' advocates at least twice per year since 2010, including presentations at legal conferences and in online webinars. Attorney Attig has published several books on VA Claims Process and Law, and regularly presents training on these topics to VSO organizations and veterans groups nationwide. Attorney Attig consults with and trains individual veterans attorneys in specific matters. Attorney Attig's primary role in cases at the firm is to set the strategy and directing the course of representation in this appeal; communicate with the client about the case, verifying, comparing, and studying 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 participating in the Rule 33 Conference; preparing the opening brief, negotiating the JMR; and, exercising billing discretion in the preparation of the EAJA petition. Based on the above information, a reasonable hourly rate for Attorney Attig's services in an appeal to a federal appellate court is \$500/hr. This is consistent with the 2019-2020 Laffey Matrix, a reasonable rate for an attorney licensed for 16 years is \$566/hr. Attorney Attig performed work in this appeal exclusively in the firm's Little Rock, Arkansas, office of ATTIG | STEEL, PLLC.

- 2.2. Time entries which have "JS" in the "Attorney" column indicated the work was performed by attorney Jennifer Steel. Ms Steel graduated from the Bowen School of Law in Little Rock, Arkansas (1993), and is licensed to practice law in Arkansas (since 1995) and Texas (since 1998). She was in private practice from 1995-2010, practicing medical malpractice and injury law. Ms. Steel was admitted to practice before the United States Court of Appeals for Veterans Claims in April 2010 and has been an accredited VA Attorney since 2010. Ms. Steel's primary role at the law firm of ATTIG | STEEL, PLLC, is that of Managing Attorney. Her duties in cases at the firm include, but are not limited to, hiring, training and managing staff, directly supervising the

work of paralegals and staff, reviewing and editing briefs and other pleadings filed with the Court, ensuring that all deadlines are docketed and met, and communicating with clients about the facts of their case, the status of their appeal and responding to questions about appellate procedure. Based on the above information, a reasonable hourly rate to be charged for Ms Steel's time, if it were billed to a private client, would be no less than \$500 per hour. For example, according to the 2019-2020 Laffey Matrix, a reasonable rate for an attorney licensed for 26 years is \$595/hr. Any work performed in this appeal occurred out of the firm's Little Rock, Arkansas office.

3. The hourly attorney rates for attorneys Attig, Curran and Steel were determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for the Northeast (for Attorney Curran) and for the South Region (for Attorneys Attig and Steel). *See Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate) to the midpoint month noted in the EAJA petition, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181.
4. At various points in this case, various paralegals billed time. Attorney Attig employed multiple individuals who performed work that is paralegal in nature in the Little Rock, Arkansas office of the law firm. Paralegals are defined by the nature of the work that they do, and work was assigned to paralegals who had sufficient experience and/or had received substantial on the job training to be able to perform tasks that are typically performed by an attorney. Each individual performing paralegal work is supervised by Attorney Attig, Steel and Curran in this case. The following paralegals billed time to this case.
 - 4.1. Entries marked "SW" refer to a paralegal with a B.S. in Legal Studies from the American Military University, and an Associate degree from Pulaski Technical College, and who had relevant experience maintaining and verifying the integrity of financial and employee and other business data with Toyota North America for 5 years. SW received substantial on the job training, performing work that is paralegal in nature and on tasks that would normally be

performed by an attorney, under the direct supervision of attorneys Chris Attig and Jennifer Steel, performing work such as managing client files, client communications, filing electronic documents with the Court, motion drafting, and maintaining and updating the firm's deadline and attorney calendars.

4.2. Entries marked "SH1" refers to a paralegal who 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. SH1 has received extensive on the job training by performing work such as maintaining firm's digital records, managing client files, client communications, filing electronic documents with the Court, and maintaining and updating the firm's deadline and attorney calendars, case-mapping a veterans benefits claim/appeal, and record review. SH1 has extensive experience maintaining, researching, verifying, comparing detailed business and government agency records. SH1 is supervised and trained by attorneys Attig and Steel and Curran to perform record review and other work that is paralegal in nature, that would typically be performed by an attorney.

4.3. Entries marked "SH2" refer to a paralegal who has 19 years experience working at law firms, including the past 16 years as a paralegal. SH2's experience during that time includes providing support to 4 - 6 attorneys at a time as a paralegal at firms that appear before the Arkansas Supreme Court and Courts of Appeal and various state agencies, supporting attorneys with commercial litigation, environmental law, employment disability law, trusts & estate law, family law and general civil and criminal practices. SH2's experience includes drafting and filing motions and briefs, legal research, maintaining firm and

attorney calendars, managing and organizing attorney dockets, editing, case planning, client support and relationships, time/billing/payroll, providing IT support, and more. SH2 is supervised in this work by attorneys Attig, Steel, and Curran.

- 4.4. Entries marked “BR” refer to a paralegal who is graduated Hendrix College in 2018, and who is currently attending law school. This individual was employed by the firm from 2018 to 2019. BR received substantial training in the firm’s systems and processes, ranging from record review, to document and motion drafting, ROP reviews, brief copy editing and proof reading, legal research, maintaining firm’s digital records, managing client files, client communications, filing electronic documents with the Court, and maintaining and updating the firm’s deadline and attorney calendars, and record review and comparison. BR was supervised by attorneys Attig and Steel to perform record review and other work that is paralegal in nature, that would typically be performed by an attorney under the supervision of attorneys Chris Attig and Jennifer Steel.
- 4.5. Entries marked “JT” refer to a paralegal who is a graduate of Everest College in Dallas, Texas and a graduate of the Medical Assistant Diploma program, with extensive experience with client management in her prior positions in the medical field. JT was employed by the firm from 2017 to 2019. JT provided extensive training on the job in performing work such as managing client files, client communications, filing electronic documents with the Court, motion drafting and maintaining and updating the firm’s deadline and attorney calendars. JT was supervised by attorneys Jennifer Steel and Chris Attig while performing work that is paralegal in nature and that would typically be performed by an attorney.
- 4.6. Entries marked “AW” refer to a paralegal who is a sophomore at Hendrix College, with an anticipated graduation date of May 2022. AW has been employed by the firm since 2016, initially fulfilling functions other than work that is paralegal in nature. Because of AW’s intelligence and

critical thinking skills (AW was 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, AW was promoted to paralegal in 2016, and performs tasks that are paralegal in nature. AW has received extensive training in performing work that is paralegal in nature, including managing client files, client communications, VA claims and medical record review, medical records summary, medical records evaluation, casemapping, filing electronic documents with the Court, motion drafting and maintaining and updating the firm's deadline and attorney calendars. AW trains other paralegals in record review, case-mapping, medical records summary, and VA Claims records summaries. AW is supervised by attorneys Jennifer Steel and Chris Attig while performing work that is paralegal in nature and that would typically be performed by an attorney.

5. The Laffey Matrix rate is an appropriate and accurate measure of the prevailing market rate for a paralegal working with the law firm of Attig | Steel, PLLC, in the Little Rock market. The Laffey Matrix is included in this appendix and shows the rates from 2016 – present. The reasonableness of this rate is corroborated by the following:

- 5.1 In 2018, a private company published a study that shows that in Arkansas, the “real hourly rates” for non-lawyers and paralegals (which I understand to be the rate that reflects actual purchasing power, in other words, the prevailing market rate), was an average of \$150 per hour. *See e.g.* Legal Trends Report (2018), found at <https://www.clio.com/wp-content/uploads/2018/10/Legal-Trends-Report-2018.pdf> at page 51, 66 (last visited December 18, 2018). Page 66 has been attached as last page of this appendix. On that chart, the “adjusted” rates demonstrate the actual purchasing power, or prevailing market rate.
- 5.2 In 2018, an organization known as “NALA – The Paralegal Association” published its National Utilization and

Compensation Survey Report. Since 1986, NALA has conducted research at a national level to understand the paralegal profession, including surveys of compensation levels and billing rates. The section of this extensive study and report that pertains to Compensation and Billing Rates has been included in this appendix, as cited in the petition. That document indicates that in 2018, the average hourly billing rate for paralegals in the Southeast geographic region, where Attig | Steel is located, was \$148/hr. In 2018, the average hourly billing rate for paralegals in firms with 2 – 5 attorneys, such as Attig | Steel, was \$137/hr. In 2018, the average hourly billing rate for paralegals with 1 to 5 years experience was \$129/hr, and the average hourly billing rate for paralegals with 16 – 20 years of experience was \$143/hr. In 2018, the average hourly billing rate for paralegals who never participated in a paralegal training program was \$144/hr. In 2018, the average hourly billing rate for paralegals who had received a “paralegal certificate” was \$150/hr.

- 5.3 The rates listed in 5.1 and 5.2 are average rates. The local prevailing rate I seek in this case, the Laffey Matrix rate, is slightly higher than the average noted in those studies and reports. Attig | Steel is located in the state capital. Our office is within blocks of the Arkansas State Supreme Court, the Arkansas legislature, and many government agencies which employ paralegals; the demand for paralegal labor in this market is high. The supply of paralegals in the market is comparatively low. According to the Bureau of Labor Statistics “May 2018 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates for Little Rock, North Little Rock and Conway, Arkansas” there are only 770 paralegals and legal assistants available in the entire market, to support 1,760 attorneys. *See* https://www.bls.gov/oes/current/oes_30780.htm By contrast, in Ft. Smith, Arkansas, there are 170 paralegals and legal assistants to support 140 lawyers. *See* https://www.bls.gov/oes/current/oes_22900.htm

- 5.4 Consequently, the Little Rock, Arkansas, market for firms seeking paralegals, particularly those who have the experience to perform, or the skill to be trained to perform, appellate law support is a “seller’s market.” Because the demand is high, and the supply low, our prevailing market rate is higher than the statewide averages.
- 5.5 To the extent the government argues that the individuals listed in paragraph 4 lack some qualification to be a paralegal, such argument would contradict the federal government’s own hiring standards. The government’s own position classification system, published by the Office of Personnel Management, attached to the EAJA appendix in this appeal, does not require any specific degree for an individual to qualify for a paralegal position in the federal government. All that is required, in terms of education is “A foundation of basic knowledge (such as may have been gained through a baccalaureate educational program or its equivalent in experience, training, or self-study) and sufficient skill to perform developmental assignments, rapidly learn the technical work, and advance to higher level work in the occupation.” Any of the individual paralegals identified in this position would qualify for a position as a paralegal in the federal government, and they perform the same types of work as do paralegals that work for the federal government.
- 5.6 Based on my experience as a Senior trial attorney with the Department of Treasury, Internal Revenue Service’s Office of General Counsel, 13 years managing and running a law firm with multiple trial and appellate practice areas, and 3 years coaching other law firms and solo practitioners in building profitable law firms, I have never known a college degree to be an educational requirement for an individual to perform work that is paralegal in nature.
- 5.7 Based on that same experience as an attorney working in the legal profession as an attorney since 2003, and based on my research and knowledge of the paralegal markets in Texas and Arkansas, the majority of paralegals in law firms do not get training from formal schooling (certificates,

associate, bachelor or master degrees, etc.) The majority of paralegals became qualified for their position as the result of on-the-job training in a law firm. For example, this chart from the State Bar of Texas Department of Research and Analysis' "2014 Paralegal Division Compensation Survey", at page 18, (found online at www.texasbar.com, shows that in 2014, more than 55% of paralegals were trained to perform their job on the job:

Table 21
Paralegal Training

Paralegal Training			
	2010 Percentage All Districts (N = 1,425)	2014 Percentage All Districts (N = 1,094)	2010 to 2014 Difference
Associate's Degree in Paralegal Studies	25.1%	26.0%	0.9%
Bachelor's Degree in Paralegal Studies	5.6%	6.8%	1.2%
Master's degree in Paralegal Studies	1.2%	1.8%	0.6%
On the job training	54.9%	55.6%	0.7%
Courses in a paralegal program	22.3%	22.7%	0.4%
Completed paralegal certificate program	44.4%	43.1%	-1.3%
Legal courses at college while obtaining a degree	12.6%	12.5%	-0.1%
Other	13.8%	12.5%	-1.3%
None	1.1%	1.1%	0.0%

5.8 This is no universal set of tasks that a paralegal may perform. A private client would be billed for paralegal time at the paralegal rate when the work performed was work that is traditionally performed by an attorney. Individuals performing work that is paralegal in nature have been trained by attorneys at ATTIG | STEEL, PLLC. Those tasks include but are not limited to: client communication, case and docket management, drafting motions, editing motions and briefs, record review, electronic filing, internal firm digital file management, legal and other research, case planning, calendar management, deadline management and calendaring, and more. But for the use of individuals performing record review in this case, I, or the lead attorney in a given case, would perform the tasks we have billed at paralegal rates, particularly record review.

5.9 Throughout the time of this appeal, and before, I have never disclosed any of the physical locations of the offices of this 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.

- 5.10 Additionally, I protect the names and identities of our paralegals and other staff for safety and privacy reasons, since all filings at the Court are public record, and there is no need for the general public to know – or have access to – the names of paralegals and other staff who work for our law firm. 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. I bill all paralegals at the same hourly rate because the substantial majority of their competence and experience comes from extensive on the job training in Court process, VA benefits law, VA claims and appeals processes, and other paralegal work not unique to veterans law.

6 I exercised my billing discretion in 3 “Tiers.”

- 6.1 In Tier I, I reviewed individual line item entries and daily billing totals. I eliminated all time that I believe: was excessive or redundant; benefitted the firm or other clients beyond the instant case; was repetitive, duplicative, or redundant; was clerical; involved tasks I would not bill to a private client; was unreasonable; was unproductive or unnecessary; or was for the education of the attorney; etc. I indicated in a particular time entry when and where I

made particular reductions in the exercise of billing discretion.

- 6.2 In Tier II, I reviewed the total hours expended on the case in distinct phases of this appeal, and 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. After reviewing the time in this case, 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. Our firm internally refers to the phases of the appeal as:

A: File & Docket (from first contact by the client until the matter was docketed at the Court);

B: Record Review and Comparison (from docketing at the Court until the conclusion of record disputes or the record dispute time period);

C: Rule 33/Pre-Briefing (from the conclusion of the time to dispute the record through the final Rule 33 Conference);

D: Briefing (from the issuance of the 60-day briefing notice until the assignment of a single judge or agreement to join a JMR, as appropriate);

E: JMR 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);

F: Original EAJA Fee Petition (from the date of issuance of the Court’s decision through the filing of the original EAJA Petition);

G: Oral Argument Phase (from the issuance of the oral argument notice through the day of completion of oral argument and any supplemental briefing);

H: Reconsideration and Appeal Phase (from the issuance of the Court's memorandum decision until the issuance of the CAVC Mandate on the merits); and,

I: Supplemental EAJA Fee Petition (from the date of the filing of the original EAJA petition until the issuance of the CAVC EAJA Mandate).

- 6.3 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 did not make any further across-the-board reduction to the remaining time billed in this appeal as the remainder of our time billed is reasonable, necessary, and productive of an ideal outcome for the client.
- 6.4 Specifically, in the Record Review phase of the appeal, my firm follows the requirements of U.S. Vet. App. R. 10 by first requesting a copy of the Appellant's C-File from the Secretary's Record Management Center under the Freedom of Information Act (FOIA). Upon receipt of the C-File from the RMC, and the RBA from the Secretary's attorney in this appeal, paralegals perform record review work that would normally be performed by an attorney. The purpose of this task is to ensure that the record before the Court is the complete record. This is an arduous task because the files are not organized the same, and do not contain all pages of all documents. Paralegals index the files identifying each individual document in both files. Paralegals may, in certain cases, compare the contents of the C-file to the contents of the RBA to ensure that all documents in the C-File were added to the RBA. Paralegals may, in certain cases, review the RBA at the direction of an attorney, to summarize and analyze various aspects of the record relevant to the issues on appeal. Paralegals may, in certain cases, review the RBA for internal consistency, by

ensuring that documents mentioned in each adjudicatory document in a given claim stream are in the RBA.

Paralegals may, in certain cases, review and summarize medical documents relevant to the conditions and issues raised in the appeal. They may, in certain cases, casemap the substantive issues in claims related documents and medical.

- 6.5 I am unable to access VBMS in my client's cases, because the Secretary allows only one attorney at a time to have VBMS access, and the majority of my firm's clients have another attorney assisting them at the VA Regional Office or Board of Veterans Appeals. Submitting a VA Form 21-22a and accessing VBMS would kick those attorneys out of the case and disrupt their representation of their clients. The Secretary does not submit any business records affidavit to certify who assembled the RBA, how it was gathered, or that it is a true and accurate representation of the record before the BVA at the time of its decision. The only way for me to verify that the RBA proposed by the Secretary is the complete record from the veteran's claims file is to request a copy of the C-File under the FOIA, index it, and compare it directly to an indexed copy of the RBA. This comparison may, or may not, result in a dispute; it is still necessary because I cannot verify the RBA is complete and accurate without comparing it to a C-File contemporaneous to the BVA decision on appeal.
- 6.6 Resolving the 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 my 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. The disparity between the two files is more than just the page count, it involves filtering through different, and differently unorganized,

files to ensure that every document the RMC says was before the BVA, and every document that is mentioned in the RBA, is included in the RBA.

- 6.7 I believe that all of the time spent in review of the record in this case is reasonable.
- 6.8 Time spent requesting extensions of time are billable to a private client and are properly billed to the government because the extensions were not due to the mismanagement of the attorney's calendar. For example, the Rule 10 dispute extension was necessary in part because the VA Records Management Center did not deliver a copy of the C-File until after the original RBA dispute deadline. The failure to seek an extension would have precluded the ability to comply with Rule 10 and verify the contents of the RBA.
- 6.9 In private practice, when I billed private clients on an hourly basis for appellate work before the U.S. Court of Appeals for the Federal Circuit, and the U.S. Court of Appeals for the 5th Circuit, I billed my client for record review time, including comparison of the transcripts submitted by lower courts and tribunals during those appeals. It is, in my experience, the type of task that is traditionally performed by attorneys, and that is traditionally billed, without reduction, to private clients.
- 6.10 I periodically consult with attorneys at other appellate law firms in non-veteran civil practice areas to confirm how they bill private clients for a review of the trial or hearing record in a state or federal intermediate court of appeal. The amount of time our firm bills in this petition is consistent with what private state and federal appellate lawyers might bill their private fee-paying clients in situations with a voluminous record on appeal that is not prepared for the appellate court by the lower court. No attorney has ever told me that they reduce the time spent on record review. Record review is the type of time that is traditionally billed, without reduction, to private clients. The record is the most critical document in an intermediate

appellate court, and having an incomplete, inaccurate, illegible or otherwise insufficient record can threaten the client's recovery, and detrimentally affect the efficiency of the court.

- 7 All time worked by attorneys and paralegals on this case was billed contemporaneous to the performance of the work by entry into our firm's case management software. My billing invoice included in this appendix is a true and accurate accounting of the time billed by attorneys and paralegals in this appeal, and a true and accurate accounting of the time eliminated from the billing in the exercise of my billing discretion. I am the custodian of records for my firm, with knowledge of how the document is created.

Executed on October 25, 2019.

By: /s/ Chris Attig
Chris Attig

Hourly and adjusted hourly rates by state (1)

State	Actual lawyer rate	Adjusted lawyer rate	Actual non-lawyer rate	Adjusted non-lawyer rate	Actual law firm rate	Adjusted law firm rate
AL	\$197	\$224	\$111	\$126	\$185	\$211
AR	\$226	\$259	\$131	\$150	\$213	\$243
AZ	\$251	\$260	\$131	\$136	\$225	\$233
CA	\$311	\$277	\$161	\$143	\$284	\$253
CO	\$247	\$242	\$136	\$134	\$225	\$221
CT	\$317	\$291	\$227	\$209	\$306	\$281
DC	\$327	\$277	\$159	\$134	\$306	\$259
DE	\$271	\$266	\$161	\$158	\$242	\$238
FL	\$283	\$286	\$151	\$153	\$257	\$259
GA	\$264	\$287	\$147	\$160	\$245	\$266
IA	\$154	\$171	\$113	\$125	\$150	\$167
ID	\$203	\$217	\$119	\$127	\$192	\$206
IL	\$280	\$278	\$161	\$159	\$262	\$261
IN	\$220	\$241	\$122	\$133	\$206	\$225
KS	\$187	\$206	\$111	\$122	\$177	\$195
KY	\$207	\$233	\$112	\$126	\$197	\$222
LA	\$222	\$243	\$101	\$111	\$207	\$227
MA	\$258	\$241	\$158	\$148	\$249	\$232



Date: 10/25/2019

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Date	Attorney	Notes	Quantity	Rate	Total
12/04/2017	JS	Per attorney request gather information about case/appeal from PNC agency attorney for case screening by attorney	0.40	\$202.50	\$81.00
12/07/2017	CA	Contact PNCs agency attorney to discuss issues in the appeal and strategy based on BWN developments at FC and in Congress, including extensive discussion weighing pros and cons, clients goals and expectations, health and timeline, etc., in context of substantive issues and BWN developments.	0.90	\$202.50	\$182.25
12/07/2017	CA	Case screen of BVA decision, research on status of CAVC & FC appeals involving BWN, Haas and §1116, discuss issues in case with partner to assess risk/issues.	0.90	\$202.50	\$182.25
12/08/2017	CA	Notes to file for other substantive issues affecting decision to research based on discussion yesterday with PNCs agency attorney.	0.30	\$202.50	\$60.75

01/05/2018	JS	Conversation with PNCs agency attorney to discuss and confirm proposed strategy in appeal after refinement through prior discussions	0.40	\$202.50	\$81.00
01/23/2018	JS	T/C to client to schedule onboarding call, answer client initial questions about BVA decision	0.40	\$202.50	\$81.00
02/01/2018	JS	Email client re: questions from CA and answers to client re earlier questions about BVA decision and AO exposures	0.10	\$202.50	\$20.25
02/01/2018	CA	Consult with client, discuss issues on appeal, various remedy possibilities, scope of appeal, range of outcomes based on external factors of congress and CAVC/FC BWN issues, timeline, answer client questions, discuss overall strategy and theory of case	1.10	\$202.50	\$222.75
02/05/2018	JS	Prepare new client package for appellant multiple documents to review and sign including ACA and forms to file in Court.	0.50	\$202.50	\$101.25
02/07/2018	CA	Review and sign representational agreements	0.10	\$202.50	\$20.25
02/08/2018	JS	File NOA include CAVC Forms, ACA, etc	0.20	\$202.50	\$40.50
02/08/2018	JS	Receive and review docketing notice upload documents and calendar deadlines re same	0.30	\$202.50	\$60.75
02/08/2018	JS	Separate calls with status of appeal to client and agency attorney to discuss filing of NOA and path forward	0.30	\$202.50	\$60.75
02/13/2018	JS	Draft/prepare/submit FOIA request for Cfile to comply with Rule 10	0.40	\$202.50	\$81.00
03/07/2018	JT	Receive and review OGC copy of BVA decision, verify same as decision CA agreed to represent on.	0.20	\$164.00	\$32.80
04/02/2018	JT	Receive and review OGC notice of appearance, update file	0.10	\$164.00	\$16.40

04/04/2018	JT	Receipt and review of RBA notice; update file	0.10	\$164.00	\$16.40
04/20/2018	CA	Draft and file RFE 45 for R10 dispute	0.20	\$202.50	\$40.50
04/23/2018	JT	Receive and review order granting RFE 45 on Rule 10 dispute, update calendars re same	0.10	\$164.00	\$16.40
04/27/2018	AW	Receive RBA cd copy and deliver copy of same to client, with instructions regarding review and attorney questions for client	0.40	\$166.00	\$66.40
05/01/2018	JT	Draft/prepare/submit FOIA appeal for Cfile to comply with Rule 10	0.40	\$164.00	\$65.60
05/10/2018	JT	Receive and review VA RMC Ack of CFile FOIA request	0.20	\$164.00	\$32.80
06/08/2018	JT	Receipt and review of notice to file brief in 60 days	0.10	\$164.00	\$16.40
06/26/2018	JT	Receipt and review of notice of Rule 33 conference; updated file and calendars	0.20	\$164.00	\$32.80
06/28/2018	JT	Receive and review order granting motion to reschedule rule 33	0.10	\$164.00	\$16.40
07/06/2018	AW	Review RBA pages 1 - 725. Page by page review for legibility/completeness pursuant to Rule 10; confirmed accuracy of all evidence/documents relied on in BVA decision; flag documents not related to claim or that are illegible [Originally billed 4 hours in exercise of billing discretion; reduce by 50% to account for any redundancy of RBA review and portions that might be considered clerical in nature]	2.00	\$166.00	\$332.00
07/06/2018	AW	Review RBA pages 726 - 1250. Page by page review for legibility/completeness pursuant to Rule 10; confirmed accuracy of all evidence/documents relied on in BVA decision; flag documents not related to claim or that are illegible [Originally billed 3 hours in exercise of billing discretion; reduce by 50% to account for any redundancy of RBA review and	1.50	\$166.00	\$249.00

		portions that might be considered clerical in nature]			
07/09/2018	AW	Review RBA pages 1250 - 2000. Page by page review for legibility/completeness pursuant to Rule 10; confirmed accuracy of all evidence/documents relied on in BVA decision; flag documents not related to claim or that are illegible [Originally billed 4.2 hours in exercise of billing discretion; reduce by 50% to account for any redundancy of RBA review and portions that might be considered clerical in nature]	2.10	\$166.00	\$348.60
07/09/2018	AW	Review RBA pages 2001 - 2650. Page by page review for legibility/completeness pursuant to Rule 10; confirmed accuracy of all evidence/documents relied on in BVA decision; flag documents not related to claim or that are illegible [Originally billed 3.2 hours in exercise of billing discretion; reduce by 50% to account for any redundancy of RBA review and portions that might be considered clerical in nature]	1.60	\$166.00	\$265.60
07/10/2018	AW	Review RBA pages 2650 - 3230. Page by page review for legibility/completeness pursuant to Rule 10; confirmed accuracy of all evidence/documents relied on in BVA decision; flag documents not related to claim or that are illegible [Originally billed 4.0 hours in exercise of billing discretion; reduce by 50% to account for any redundancy of RBA review and portions that might be considered clerical in nature]	2.00	\$166.00	\$332.00
07/10/2018	AW	Page by page review of C-File for compliance with Rule 10; identify and index documents for attorney comparison to RBA. Pages 1 to 450 [Originally billed 2.8 hours, but in exercise of billing discretion; reduce by 50% to account for any redundancy of RBA review and portions that might be considered clerical in nature]	1.40	\$166.00	\$232.40

07/13/2018	AW	Page by page review of C-File for compliance with Rule 10; identify and index documents for attorney comparison to RBA. Pages 451 to 1200 [Originally billed 4.4 hours, but in exercise of billing discretion; reduce by 50% to account for any redundancy of RBA review and portions that might be considered clerical in nature]	2.20	\$166.00	\$365.20
07/13/2018	AW	Page by page review of C-File for compliance with Rule 10; identify and index documents for attorney comparison to RBA. Pages 1201 to 1700 [Originally billed 2.6 hours, but in exercise of billing discretion; reduce by 50% to account for any redundancy of RBA review and portions that might be considered clerical in nature]	1.30	\$166.00	\$215.80
07/16/2018	AW	Page by page review of C-File for compliance with Rule 10; identify and index documents for attorney comparison to RBA. Pages 1701 to 2200 [Originally billed 3.0 hours, but in exercise of billing discretion; reduce by 50% to account for any redundancy of RBA review and portions that might be considered clerical in nature]	1.50	\$166.00	\$249.00
07/16/2018	AW	Page by page review of C-File for compliance with Rule 10; identify and index documents for attorney comparison to RBA. Pages 2201 to 3000 [Originally billed 4.6 hours, but in exercise of billing discretion; reduce by 50% to account for any redundancy of RBA review and portions that might be considered clerical in nature]	2.30	\$166.00	\$381.80
07/17/2018	AW	Page by page review of C-File for compliance with Rule 10; identify and index documents for attorney comparison to RBA. Pages 3000 to 3291 [Originally billed 1.8 hours, but in exercise of billing discretion; reduce by 50% to account for any redundancy of RBA review and	0.90	\$166.00	\$149.40

		portions that might be considered clerical in nature]			
07/25/2018	JT	Upload Original C-File and deliver copy to client and agency attorney with instructions to review	0.20	\$164.00	\$32.80
07/30/2018	CA	confer re stay pending outcome of Gray II	0.20	\$202.50	\$40.50
07/30/2018	CA	draft motion for Gray II stay	0.80	\$202.50	\$162.00
07/31/2018	JT	Receive and review order cancelling rule 33 conference	0.10	\$164.00	\$16.40
08/09/2018	JT	Receive, review and update calendar on order granting stay	0.10	\$164.00	\$16.40
08/17/2018	JS	discuss stay order with lead counsel, update client and client's agency attorney on status	0.30	\$202.50	\$60.75
09/28/2018	SW	receive and review CAVC Order lifting stay & 60 day DL for opening brief, discuss same with lead attorney	0.10	\$166.00	\$16.60
10/18/2018	SW	Receipt and review of notice of Rule 33 conference; updated file and calendars	0.10	\$166.00	\$16.60
11/02/2018	SW	Draft and file motion for stay based on attorney guidance from other cases [In exercise of billing discretion, .6 hours spent on this task reduced to .1 because motion for stay largely similar to motion used in our other appeals]	0.10	\$166.00	\$16.60
11/05/2018	CA	discuss stay request with court; look up and confirm information, discuss with PL and partner, return call/email to AS @ Court	0.60	\$202.50	\$121.50
11/06/2018	SW	Receive and review order granting stay, update calendar re same	0.10	\$166.00	\$16.60
01/29/2019	JS	Discuss Procopio outcome with lead attorney; discuss result of Procopio and impact on this appeal in status update to both client and client's agency attorney	1.20	\$202.50	\$243.00
02/04/2019	CA	Draft and file Solze Notice	0.30	\$202.50	\$60.75

03/26/2019	CA	Draft proposal for Joint Motion to Reverse and Remand, to avoid fees related to preparing a Rule 33 memo	0.60	\$202.50	\$121.50
03/26/2019	BR	Receive and review order lifting stay, update calendars, discuss next steps with lead counsel	0.50	\$166.00	\$83.00
04/19/2019	BR	Receipt and review of notice of Rule 33 conference; updated file and calendars	0.20	\$166.00	\$33.20
04/23/2019	CA	reschedule confer on Rule 33	0.10	\$202.50	\$20.25
04/23/2019	CA	emails to/among OGC and CLS to reschedule Rule 33 conference	0.20	\$202.50	\$40.50
04/24/2019	BR	Receive and review motion to reschedule rule 33 brief and conference	0.10	\$166.00	\$16.60
04/30/2019	CA	Contact OGC to discuss status of proposed post-Procopio remand; notice to OGC that CA will incur attorneys fees drafting the rule 33 memo if accord is not reached.	0.20	\$202.50	\$40.50
04/30/2019	SH2	Serve Rule 33 Memo and Certificate of Service; copy to client w/status update.	0.20	\$166.00	\$33.20
05/14/2019	CA	Emails with/among OGC and CLS regarding scheduling of Rule 33 conference and briefing.	0.20	\$202.50	\$40.50
05/23/2019	JS	Confer re: Principal Brief Extension	0.10	\$202.50	\$20.25
05/31/2019	CA	Prepare, participate and notes following Rule 33	0.40	\$202.50	\$81.00
06/27/2019	CA	Re: Status of JMR (18-677 Piverotto)	0.10	\$202.50	\$20.25
07/01/2019	CA	confer re JMR stay	0.10	\$202.50	\$20.25
07/23/2019	CA	Status with client agency attorney; discuss status, answer questions about process and procedure and relief in his appeal.	0.50	\$202.50	\$101.25
07/29/2019	SH2	Contact client with information from attorney about appeal, following up from prior discussion with attorney	0.30	\$166.00	\$49.80

07/30/2019	CA	update client on status (remand v. reversal), procopio, legislation, stay, timeline, and path forward.	0.60	\$202.50	\$121.50
07/30/2019	CA	request status of JMR from OGC	0.10	\$202.50	\$20.25
07/31/2019	CA	discuss stay extension	0.10	\$202.50	\$20.25
08/02/2019	CA	Receive JMR, review language and propose edits and return to OGC	0.60	\$202.50	\$121.50
08/29/2019	SH2	Draft and file Motion for Stay Proceeding Negotiate JMR	0.20	\$166.00	\$33.20
08/29/2019	CA	research Secretary's use of identical procedural language in other JMRs, in light of impasse on procedural language; review and respond to Secretary's position rejecting edits to language in JMR; return draft JMR to OGC with proposed revisions; Confirm with OGC that JMR is good to file	0.80	\$202.50	\$162.00
08/30/2019	SH2	receive and review order granting stay.	0.10	\$166.00	\$16.60
09/03/2019	CA	Confer re second rule 33 conference	0.20	\$202.50	\$40.50
09/06/2019	CA	final review of JMR and sign/deliver to OGC	0.40	\$202.50	\$81.00
09/09/2019	SH2	Receive and review JMR as filed, update calendar and deadlines	0.20	\$173.00	\$34.60
09/25/2019	CA	Receipt and review of order granting JMR; mandate	0.10	\$202.50	\$20.25
10/21/2019	SH2	Prepare for EAJA filing; download time records for case; research and calculate CPI-U/EAJA rates; draft motion template for attorney for EAJA petition; update and organize billing affidavit; verify time update case law as needed; deliver same to attorney for review	1.00	\$173.00	\$173.00
10/23/2019	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	0.90	\$202.50	\$182.25

		a day is unreasonable; plus unnecessary duplicative and other reasons to exclude.			
10/25/2019	CA	Assemble facts specific arguments as to reasonableness; draft atty declaration and petition; Final review of pleading for coherence/consistency notes of final edits/ changes direct paralegal to file petition	0.80	\$202.50	\$162.00
10/25/2019	SH2	Filing EAJA petition; calendar deadlines; upload to case file	0.20	\$173.00	\$34.60
Quantity Subtotal					41.5

Time Keeper	Position	Quantity	Rate	Total
Chris Attig	Attorney	12.4	\$202.50	\$2,511.00
Jennifer Steel	Attorney	4.6	\$202.50	\$931.50
SH2	Non-Attorney	1.4	\$173.00	\$242.20
SH2	Non-Attorney	0.8	\$166.00	\$132.80
BR	Non-Attorney	0.8	\$166.00	\$132.80
JT	Non-Attorney	1.9	\$164.00	\$311.60
AW	Non-Attorney	19.2	\$166.00	\$3,187.20
SW	Non-Attorney	0.4	\$166.00	\$66.40
Quantity Total				41.5
Subtotal				\$7,515.50
Total				\$7,515.50

Hourly and adjusted hourly rates by state (1)

State	Actual lawyer rate	Adjusted lawyer rate	Actual non-lawyer rate	Adjusted non-lawyer rate	Actual law firm rate	Adjusted law firm rate
AL	\$197	\$224	\$111	\$126	\$185	\$211
AR	\$226	\$259	\$131	\$150	\$213	\$243
AZ	\$251	\$260	\$131	\$136	\$225	\$233
CA	\$311	\$277	\$161	\$143	\$284	\$253
CO	\$247	\$242	\$136	\$134	\$225	\$221
CT	\$317	\$291	\$227	\$209	\$306	\$281
DC	\$327	\$277	\$159	\$134	\$306	\$259
DE	\$271	\$266	\$161	\$158	\$242	\$238
FL	\$283	\$286	\$151	\$153	\$257	\$259
GA	\$264	\$287	\$147	\$160	\$245	\$266
IA	\$154	\$171	\$113	\$125	\$150	\$167
ID	\$203	\$217	\$119	\$127	\$192	\$206
IL	\$280	\$278	\$161	\$159	\$262	\$261
IN	\$220	\$241	\$122	\$133	\$206	\$225
KS	\$187	\$206	\$111	\$122	\$177	\$195
KY	\$207	\$233	\$112	\$126	\$197	\$222
LA	\$222	\$243	\$101	\$111	\$207	\$227
MA	\$258	\$241	\$158	\$148	\$249	\$232

USAO ATTORNEY'S FEES MATRIX — 2015-2020*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
31+ years	568	581	602	613	637
21-30 years	530	543	563	572	595
16-20 years	504	516	536	544	566
11-15 years	455	465	483	491	510
8-10 years	386	395	410	417	433
6-7 years	332	339	352	358	372
4-5 years	325	332	346	351	365
2-3 years	315	322	334	340	353
Less than 2 years	284	291	302	307	319
Paralegals & Law Clerks	154	157	164	166	173

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 with other parties 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 that "both the plaintiff and defense sides of the bar" should "work together and think creatively about how to produce 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'").



**2018
National
Utilization &
Compensation
Survey Report**

Prepared for:

NALA – The Paralegal Association

Prepared by:

Data Point Consulting LLC

2018 National Utilization & Compensation Survey Report

Findings at a Glance

Trending

Since 1986, NALA has conducted research at a national level to better gain insights on the educational backgrounds, work environments, duties & responsibilities, and compensation levels of paralegals, which has been invaluable for those in this profession. The current report depicts various topics as noted above from the data collected in 2018, along with trends where appropriate.

As reported by the US Department of Labor¹ in 2016, the paralegal profession comprises of 285,600 jobs and is projected to grow by 15% from 2016 to 2026, which equates to an employment change of an additional 41,800 jobs. The paralegal profession's job outlook is projected to increase much faster than the average job sector. Given the number of 2018 survey respondents² (n = 1,112), this study provides a generalization of the paralegal profession.

Survey Respondents

Similar to NALA's study completed in 2016, the majority of respondents were female (96%), a NALA member (70%), and about 50 years old. Approximately 70% of respondents indicated that they were a certified paralegal, 9% of them have their CLAS and 30% of them obtained the ACP credential. The majority of respondents were from the southeast region of the U.S., including states such as Florida (17%), the Carolina's (7%), and Tennessee (3%). Of

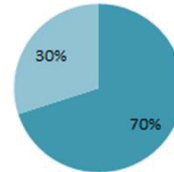
¹ US DOL <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm>

² This study is specifically for market research purposes and not intended to price fix on the open market.

the respondents, more than half of them work in a city with less than 500,000 people and have earned a Bachelor's degree. Bachelor's degrees are projected to grow in the next few years among paralegals. Precisely 50% of respondents received a certificate in a paralegal program, which is up 6% since 2016.

Membership

■ NALA Member ■ NonMember



Employment & Responsibilities

Similar results were seen in 2016 and 2018 when it came to employment and responsibilities of paralegals. The majority of paralegals are employed by companies while a small percentage is self-employed/business owners (3%). Only 5% of paralegals work in a non-profit sector while 70% work private. Although roughly half of employers offer some type of flexible work arrangement, the data shows a decline in the percentage of arrangements in 2018 compared to 2016 (down 4%). These flexible work arrangements consist of telecommuting, which has specifically increased substantially since 2014 (up 11%) and summer hours. *Paralegal* continues to be the most common job title given to respondents since 2014. Roughly 30% of paralegals work alongside 2 to 5 attorneys, which has been consistent since 2012 with the majority of paralegals working full-time (30 plus hours).

Roughly 50% of paralegals do not have secretarial (administrative) assistance available to them, which has been a continuous trend since 2010. Meanwhile almost 80% of paralegals are seeing an

increase in duties and responsibilities where majority of the increase is due to the level of sophistication.

Overall, paralegals are supervised and their work load is assigned by attorneys or office administrators/managers. Typically, paralegals who supervise others have more than 25 years of legal experience, which has been consistent since 2014.

When looking into several specialty areas in which paralegals work, roughly 30% spend 80-100% of their time in the following areas:

- Litigation-civil (38%)
- Family law/Domestic relations (29%)
- Personal injury (28%)

Over the last several years, 90% of paralegals attend legal education seminars for professional growth, and over half of them seek certification and get involved in associations like NALA.

Compensation & Billing

Half of paralegals are primarily paid hourly, while the other half are salaried. On average, paralegals work 40 hours per week where 29 of those hours are billable, which continues to be the trend since 2016. About 55% of firms bill paralegal time, yet 58% of paralegals are not expected to produce a set number of billable hours per week. Slightly over half of paralegals sometimes work in excess of their normal working hours, yet 45% of them never receive overtime (up 6% from 2016).

Hourly Billing Rate

In regard to paralegal hourly billing rates, which have been consistent since 2010, the Far West region continues to report the highest hourly billing rate averaging \$139 an hour, which includes states like California, Oregon, and Nevada. Paralegals in the Rocky Mountain continue to average the lowest hourly billing rate of \$107 since 2010. Data continues to show that, on average, firms that have more attorneys, have a higher hourly billing rate for

paralegals. Also, as one would suspect, the more years of legal experience, the higher hourly billing rate one charges, which has averaged \$148 per hour since 2014.

Compensation

Total compensation³ continues to grow, on average 6%, from 2002 to 2018, which is well above the national trend of 2-3%. In 2018, on average, a paralegal's annual compensation totaled \$67,578, which is notably higher at 10% compared to 2016 at \$61,671. Not surprising, paralegals compensation generally increases due to having more years of legal experience, education, and working with more attorneys. For those who receive bonuses, paralegals should anticipate an additional \$4,000 each year.

Those living in the Far West continue to see the highest compensation averaging \$65,029 since 2004 while those living in the Plains States average the lowest at \$53,194. On average, paralegals earned 6% more money with a Bachelor's degree compared to an Associate degree and 13% more money for those who earned a Master's degree compared to a Bachelor's degree. There has been a notable increase in compensation over the years as paralegals receive more educational degrees.

Employee Benefits

Since 2014, there has been little fluctuation in employee benefits as 80% of paralegals indicated that their employer provides and contributes to a retirement and/or pension plan for their employees and about 35% of employers provide a profit sharing plan. Top five paid benefits employers offer remain the consistent, including, conference fees, professional dues, health & life insurance, and parking.

³ Compensation includes salary, overtime, & bonuses

2018 National Utilization & Compensation Survey Report

Report Overview

This study was conducted to better understand the educational backgrounds, work environments, duties and responsibilities, billing, and compensation levels of paralegals. The research provided is invaluable to those working in the paralegal profession as it provides several years of market research data for compare and contrast purposes.

Methodology

NALA hired Data Point Consulting LLC as a third party contractor to develop, administer, analyze, and provide a report of the survey results. The anonymous survey was administered electronically to both NALA members and non-members through direct and forwarded emails as well as social media platforms (Facebook, LinkedIn) during the months of June and July of 2018. Multiple reminders were sent to increase the response rate. This study has been conducted every two years since 1986. A total of 1,112 individuals responded to the survey in 2018, 1,226 in 2016, 1069 in 2014, 1330 in 2012, and 1451 in 2010.

Although there is no standard response rate across research, the higher the response rate, the better. Given the number of individuals that responded in 2018 and the comparable demographic makeup of survey respondents who were members of NALA, the survey sample is representative of the NALA's paralegal population. This study is specifically for market research purposes and not intended to price fix on the open market.

The report is divided into four sections, including: demographics, employment and responsibilities, compensation & billing rates, and employee benefits.



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Respondent Demographics

2018

Results



Compensation & Billing Rates
2018
Results

Compensation & Billing Rates

2018 Average hours per week (billable & non-billable): 40 hours

2018 Average billable hours per week: 29 hours

2018 Average billing rate per hour: \$145

Figure 27: Primary Compensation

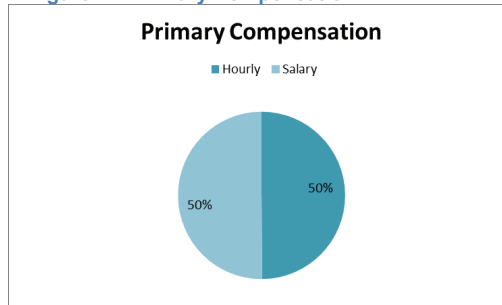


Table 3: Billing Rates

Billing Rate Ranges	2010	2012	2014	2016	2018
Less than \$30	2%	2%	2%	2%	0%
\$31 to 35	1%	1%	0%	1%	0%
\$36 to 40	0%	0%	1%	0%	0%
\$40 to 45	1%	0%	0%	0%	0%
\$46 to 50	2%	1%	0%	1%	0%
\$51 to 55	1%	1%	0%	0%	0%
\$56 to 60	1%	1%	1%	0%	0%
\$61 to 65	4%	1%	1%	1%	1%
\$66 to 70	2%	2%	2%	1%	1%
\$71 to 75	9%	9%	6%	5%	4%
\$76 to 80	2%	3%	3%	3%	2%
\$81 to 85	4%	4%	3%	3%	2%
\$86 to 90	6%	7%	4%	5%	4%
\$91 to 95	5%	4%	4%	4%	3%
\$96 to 100	10%	10%	11%	11%	7%
\$101 to 105	1%	1%	0%	1%	0%
\$106 to 110	4%	3%	5%	3%	5%
\$111 to 115	1%	1%	2%	1%	1%
\$116 to 120	1%	1%	2%	2%	2%
\$121 to 125	9%	11%	9%	12%	11%
\$126 to 130	2%	2%	2%	2%	2%
\$131 to 135	3%	3%	3%	4%	2%
\$136 to 140	3%	3%	2%	2%	3%
\$141 to 145	0%	0%	2%	2%	2%
\$146 to 150	2%	2%	8%	8%	13%
\$151 to 155	1%	7%	1%	1%	1%
\$156 to 160	1%	1%	1%	2%	2%
\$161 to 165	1%	1%	2%	2%	1%
\$166 to 170	1%	1%	0%	1%	1%
\$171 to 175	2%	1%	4%	3%	6%
\$176 to 180	1%	4%	2%	1%	2%
\$181 to 185	1%	12%	2%	1%	3%
\$186 to 190	1%	7%	1%	0%	1%
\$191 to 195	1%	10%	1%	3%	2%
\$196 to 200	1%	10%	2%	2%	3%
\$201 to 205	0%	1%	0%	0%	1%
\$206 to 210	0%	4%	1%	1%	0%
\$211 to 215	1%	3%	1%	0%	1%
More than \$215	-	-	-	8%	12%

*% of respondents that fall within billing rate range; Green indicates top 10 billing rate ranges in each year

Compensation & Billing Rates

Figure 28: Average Hourly Billing Rates by Region

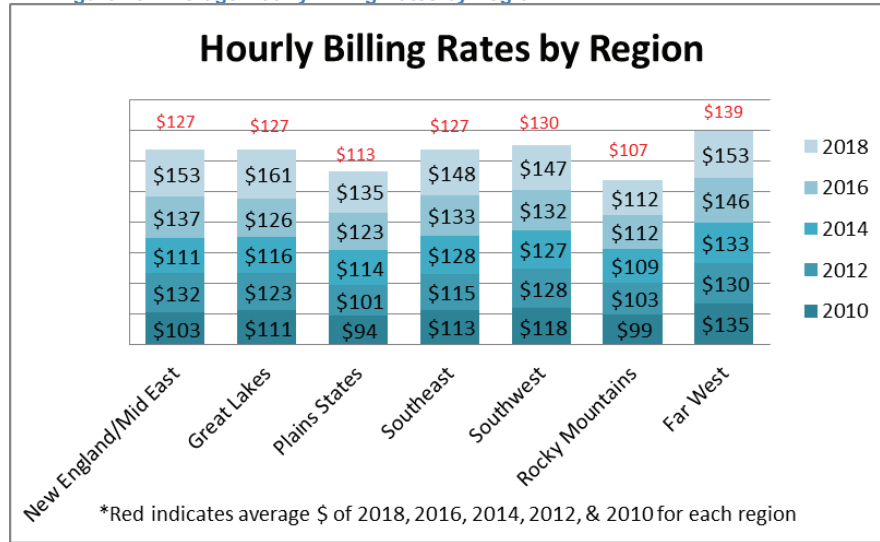
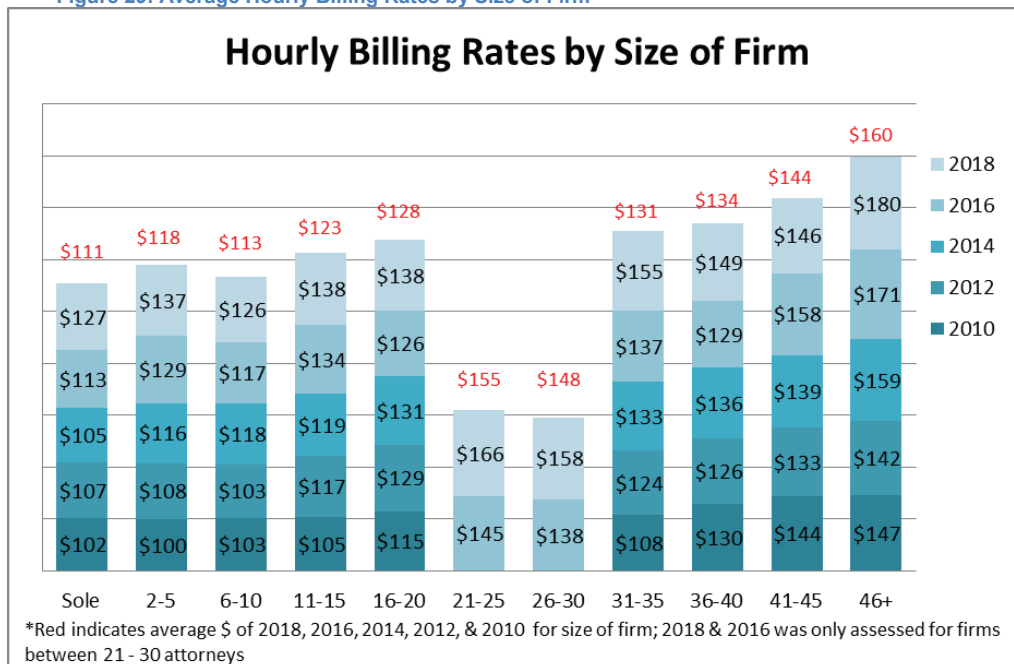


Figure 29: Average Hourly Billing Rates by Size of Firm



Compensation & Billing Rates

Figure 30: Average Hourly Billing Rates by Total Years Legal Experience

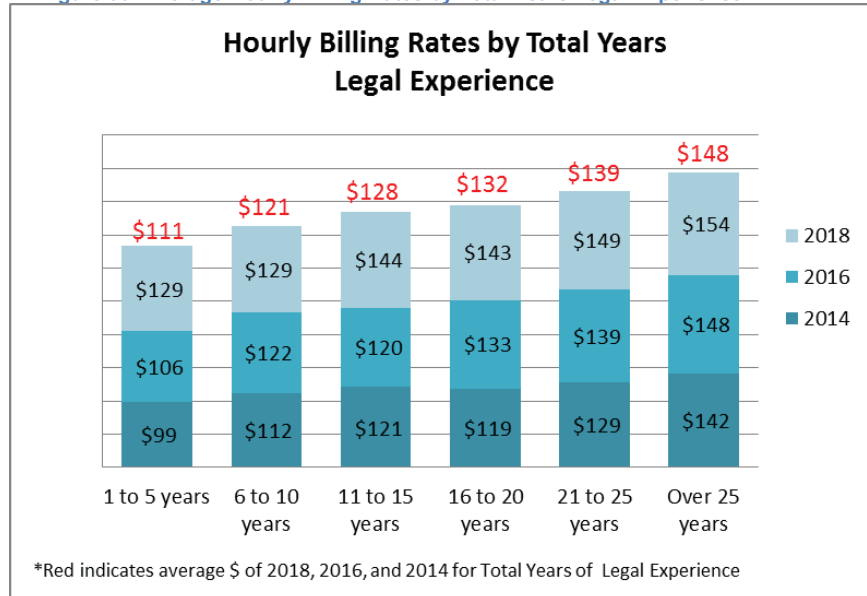
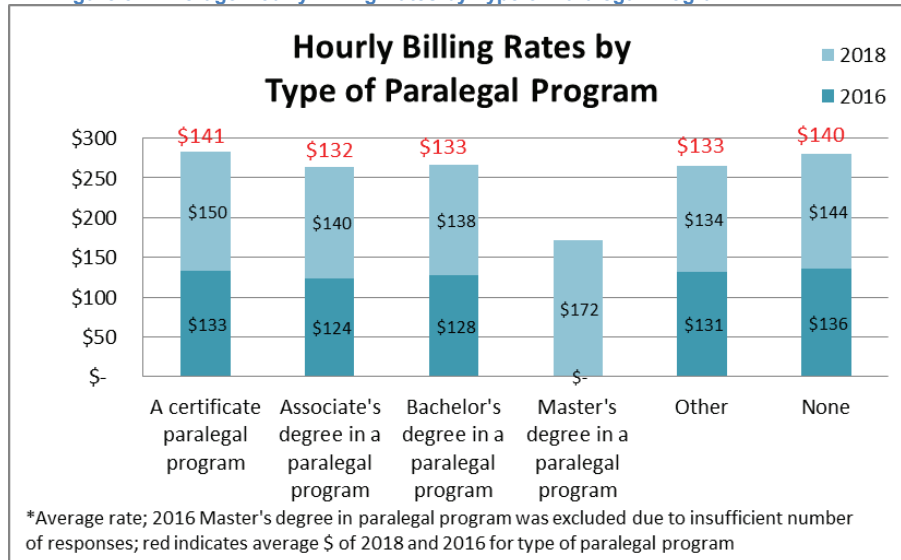


Figure 31: Average Hourly Billing Rates by Type of Paralegal Program



Position Classification Standard for Paralegal Specialist Series, GS-0950

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SERIES DEFINITION

This series includes positions not requiring professional legal competence which involve various legal assistance duties, of a type not classifiable in some other series in the Legal and Kindred Group, in connection with functions such as hearings, appeals, litigation, or advisory services. The specialists analyze the legal impact of legislative developments and administrative and judicial decisions, opinions, determinations, and rulings on agency programs; conduct research for the preparation of legal opinions on matters of interest to the agency; perform substantive legal analysis of requests for information under the provisions of various acts; or other similar legal support functions which require discretion and independent judgment in the application of a specialized knowledge of laws, precedent decisions, regulations, agency policies and practices, and judicial or administrative proceedings. Such knowledge is less than that represented by graduation from a recognized law school, and may have been gained from formalized, professionally instructed agency or educational institution training or from professionally supervised on-the-job training. While the paramount knowledge requirements of this series are legal, some positions also require a practical knowledge of subject matter areas related to the agency's substantive programs.

This supersedes the series definition for the Paralegal Specialist Series, GS-0950, issued September 1975.

SERIES COVERAGE

This series covers a variety of positions that involve legal work which is usually ancillary to the work of attorneys, administrative law judges, administrative agency appellate boards, or other duly designated managers of legal work in areas such as litigation; the provision of legal opinions; or agency appellate or review board proceedings, actions of regulatory boards or commissions, and similar adjudicative functions based on hearings conducted under the Administrative Procedure Act or other statutory appellate authority. Duties may include examining case files to determine issues and sufficiency of evidence or documentation; searching for legal precedents, analyzing their applicability, and preparing digests of points of law involved; drafting briefs, other litigation papers, or advisory opinions for review and approval of attorneys; analyzing legal issues involved in requests for agency records; analyzing subpoenaed documents for possible patterns and trends relevant to litigation; initiating additional factfinding by agency personnel in other offices; developing and justifying recommendations for agency action on legal issues; analyzing appellate records to isolate facts pertinent to distinct legal issues; interviewing and evaluating potential witnesses; preparing for hearings and court appearances by briefing attorneys or administrative law judges on the issues and by assembling and arranging case files, documents, and exhibits; attending court sessions or hearings to be informed on progress, the development of new issues, issues that have been resolved, and areas that need more emphasis; and testifying in court concerning exhibits prepared.

Paralegal specialists are usually located in an organizational entity staffed with attorneys or administrative law judges where the more commonly occurring legal activities can be handled by

professionally supervised paraprofessionals. However, there may be units or organizations which contain paralegal specialists but which contain no professionally qualified legal staff. In such situations, the paralegal specialist typically works in a close functional relationship with another unit containing legal professionals who provide technical guidance and review and who ultimately have responsibility for the legal issues.

Many positions in this series also require a substantive knowledge of other fields, such as disability evaluation, industrial practices, management sciences, and natural resources. Such knowledges are gained through university-level education, formalized agency training courses, or professionally supervised on-the-job training.

EXCLUSIONS

Excluded from this series are:

1. Positions that require legal training equivalent to that represented by graduation from a recognized law school and bar membership. Such positions are classifiable to the appropriate professional series in the Legal and Kindred Group, GS-900, or in the [Copyright, Patent, and Trade-Mark Group, GS-1200](#).
2. Positions that apply established instructions, rules, regulations, precedents, and procedures in performing legal support and case management duties, such as case tracking, scheduling court appearances, notifying witnesses of appearances, composing and typing routinely required legal forms, classifying and filing legal documents, and similar recurring duties involving standardized procedures. Such positions are classifiable to the [Job Family Position Classification Standard for Assistance Work in the Legal and Kindred Group, GS-0900](#).
3. Positions that apply a specialized knowledge of a body of law and its implementing regulations in examining, adjudicating, adjusting, or reconsidering claims or applications filed under the provisions of particular Federal laws and that do not require the knowledge of judicial or administrative proceedings, formal or informal rules of evidence, witness examination and evaluation, or other related knowledge and skills characteristic of Paralegal Specialists. Such positions are classifiable to the appropriate specialized series in this group, such as the [Land Law Examining Series, GS-0965](#), or other claims examining series.
4. Positions that are primarily involved in the application of a specialized knowledge of particular laws, regulations, precedents, and agency practices as they relate to the processing and examination of legal documents belong in the [Job Family Position Classification Standard for Assistance Work in the Legal and Kindred Group, GS-0900](#). Such positions usually do not require the knowledge of legal systems, administrative law, and legal research and analytical techniques that are typically applied by paralegal specialists.
5. Positions in which legal knowledge is incidental or subordinate to program or investigative knowledge and skills used to determine compliance with specific aspects of laws and regulations pertaining to an agency's enforcement or compliance mission. Although such positions may include recommending and

participating in litigation, or administrative judgments, they are classifiable to the appropriate series in the [Investigation Group, GS-1800](#), or other specialized compliance series, such as the [Equal Opportunity Compliance Series, GS-0360](#), or the [Consumer Safety Series, GS-0696](#).

6. Positions that perform quasi-legal duties pertaining to the specialized fields of patents, copyrights and trademarks. Such positions are classifiable to the appropriate series in the [Copyright, Patent and Trade-Mark Group, GS-1200](#).
7. Positions in which substantial legal knowledge and writing or editing skills are equally important qualification requirements. Such positions are classifiable to the legal specialization of the [Technical Writer and Editing Series, GS-1083](#).
8. Positions in which the paramount knowledge requirement is in a particular subject-matter field, such as personnel management, and which also require a knowledge of the laws, rules, regulations and precedent court decisions that apply to that subject-matter area belong in the appropriate subject-matter series.

AUTHORIZED TITLES

The authorized titles for positions in this series are *Paralegal Specialist* and *Supervisory Paralegal Specialist*.

GRADING POSITIONS

Positions should be evaluated on factor-by-factor basis, using, to the extent possible, one or more of the comparable Office of Personnel Management benchmark position descriptions or the factor level descriptions for the Paralegal Specialist Series, or both. Only the designated point values may be used. More complete instructions for evaluating positions are contained in the [Introduction to the Position Classification Standards](#).

Please note that the absence of a factor level description or benchmark for positions at any particular grade level does not preclude evaluation of positions at that grade. Should the work being evaluated exceed the highest level for a factor level description in this standard or where the work is not described in a factor level description or benchmark, the [Primary Standard](#) and/or another related FES standard may be used to evaluate the position in conjunction with, and as an extension of, the criteria contained in this standard.

Supervisory and managerial positions that fully meet or exceed the minimum level of supervisory responsibility defined in the [General Schedule Supervisory Guide](#) should be evaluated through application that Guide.

GRADE CONVERSION TABLE

Total points on all evaluation factors are converted to GS grade as follows:

GS Grade	Point Range
5	855-1100
6	1105-1350
7	1355-1600
8	1605-1850
9	1855-2100
10	2105-2350
11	2355-2750
12	2755-3150
13	3155-3600
14	3605-4050
15	4055- up

FACTOR LEVEL DESCRIPTIONS

These factor level descriptions show the application of the Primary Standard to the Paralegal Specialist Series. They describe the levels of the various factors (and give the corresponding point values) typically found in this series.

FACTOR 1, KNOWLEDGE REQUIRED BY THE POSITION

Factor 1 measures the nature and extent of information or facts the paralegal specialist must understand to do the work (e.g., agency regulations, laws, court opinions) and the nature and extent of skills (e.g., analytical ability, interviewing, clear presentation of analyses) to apply these knowledge. To be used as a basis for selecting a level under this factor, a knowledge must be required and applied.

Level 1-5 -- 750 points

A foundation of basic knowledge (such as may have been gained through a baccalaureate educational program or its equivalent in experience, training, or self-study) and sufficient skill to perform developmental assignments, rapidly learn the technical work, and advance to higher level work in the occupation. This includes knowledge and skill in factfinding, problem analysis, problem solving, writing, interpreting regulations and policies, and a practical understanding of the legal activities and substantive mission of the organization.

OR

Equivalent knowledge and skill.

Level 1-6 -- 950 points

In addition to the knowledge and skills described at level 1-5, skill in applying basic legal principles and concepts, legal research methods, and data analysis techniques to perform independently recurring assignments which are typically covered by established precedents. Assignments typically require all or most of the following:

- Practical knowledge of basic legal principles and concepts to interpret and apply, or explain to others the application of, a body of law, regulations, precedents, and practices covering one or more recurring types of legal actions encountered in the agency.
- Knowledge of the principles, concepts, and methods of legal research and reference sources such as agency manuals, directives, issuances, court reports, appellate records, or commercial legal publications sufficient to locate appropriate data such as applicable precedents, legislative history, and commentaries which bear on particular legal issues.
- Knowledge of legal techniques and skills necessary to analyze both issues of fact and issues of law in order to prepare digests of case decisions, evaluate the applicability of precedents, or to draft briefs, other litigation papers, advisory opinions, or findings.
- Knowledge of formal or informal rules of evidence and skill necessary to evaluate the adequacy and/or admissibility of evidence, to request additional data or further investigation, when needed, or to develop narrative or graphic exhibits to support specified legal arguments.

OR

Equivalent knowledge and skill.

Level 1-7 -- 1250 points

In addition to the knowledge and skills represented by the 1-6 level, an in-depth knowledge of the application of various laws, court and/or administrative decisions and interpretations, rules, regulations, policies, and procedures which pertain to the administration of particular legal programs in substantive areas of law (e.g., communications, antitrust), or to particular types of legal cases and actions (e.g., the civil or criminal cases investigated and prosecuted by a U.S. Attorney's Office) and highly developed, specialized legal skills and proficiency sufficient to:

- analyze and evaluate the relevance of particular technical evidence or questions which arise in the conduct of specialized legal programs;
- perform extensive and thorough legal research into the legislative history, precedent cases, decisions, and opinions that may be applicable to particular legal matters;
- investigate and become thoroughly familiar with subject matter details involved in a case or legal matter; determine the specific data needed and best approach to obtain this data or to determine the relevance or sufficiency of available legal, technical (e.g., financial, statistical), or other related data;
- coordinate actions with other Federal agencies or State and local jurisdictions that have closely related responsibilities; or
- perform similar functions requiring specialized program knowledge acquired through extended experience.

OR

Equivalent knowledge and skill.

FACTOR 2, SUPERVISORY CONTROLS

"Supervisory Controls" covers the nature and extent of direct or indirect controls exercised by the supervisor, the paralegal specialist's responsibility, and the review of completed work. Controls are exercised by the supervisor in the way assignments are made, instructions are given to the employee, priorities and deadlines are set, and objectives and boundaries are defined. Responsibility of the employee depends upon the extent to which the employee is expected to develop the sequence and timing of various aspects of the work, to modify or recommend modification of instructions, and to participate in establishing priorities and defining objectives. The degree of review ranges from close and detailed review of each phase of the assignment to a review of completed projects for adherence to policy. (NOTE: Guidance may be furnished by an attorney, higher level paralegal specialist or other personnel as well as the actual supervisor.)

Level 2-1 -- 25 points

The supervisor makes specific assignments that are accompanied by clear, detailed, and specific instructions. The paralegal specialist works as instructed and consults with the supervisor on all matters not specifically covered in the original instructions. The employee's assignments are spot-checked during performance and reviewed upon completion for accuracy, adequacy, and adherence to instructions and established procedures.

Level 2-2 -- 125 points

The supervisor provides continuing and individual assignments by indicating what is to be done, quality and quantity expected, priorities, and deadlines.

The paralegal specialist uses initiative in carrying out recurring tasks, such as reviewing cases to determine the need for additional data from field staff and in providing routine advice to appellants. Additional specific instructions and assistance are provided for new or difficult procedures. Problems and deviations not covered by instructions are reported to the supervisor.

The supervisor reviews results of the specialist's work for technical accuracy and compliance with instructions, and provides assistance for new or more difficult assignments in process and upon completion.

Level 2-3 -- 275 points

The supervisor makes assignments by defining objectives, priorities, and deadlines, and assists the employee with unusual situations which do not have clear precedents.

The paralegal specialist independently conducts legal research, selects evidence from subpoenaed documents, and prepares drafts of briefs, other litigation papers, or advisory opinions. The employee carries out assignments and resolves problems and deviations in line with previous training and agency policies, precedents, directives, and practices.

The supervisor reviews work for technical soundness and conformity to requirements by auditing completed case records, briefs, dispositions, or other documents, and through discussion of cases. The review focuses on the soundness of the end product rather than the adequacy or type of method employed to produce the product.

Level 2-4 -- 450 points

The supervisor interprets objectives, sets necessary resources, and defines the scope of the employee's duty assignment. The employee and the supervisor together develop deadlines and priorities for work to be done.

Within this framework the employee independently plans and carries out assignments and coordinates activities with professional legal staff of the agency and with staff of other Federal or non-Federal activities. Employees at this level must use considerable ingenuity to anticipate program or case requirements, develop legal arguments and supporting evidence, resolve conflicting statements, or search for corroborating or contravening precedents. In some assignments, the employee also determines the approach to be taken and methodology to be used. The supervisor is kept informed of actions involving potentially controversial issues or issues with far-reaching implications.

Completed work is reviewed only in terms of productivity and effectiveness in meeting requirements or accomplishing objectives.

FACTOR 3, GUIDELINES

This factor covers the nature of guidelines and the judgment needed to apply them. Individual jobs vary in the specificity, applicability, and availability of guidelines for the performance of assignments and the extent to which the paralegal specialist must be able to use the reference sources available. Consequently, the constraints and judgmental demands placed upon the paralegal specialist also vary.

Level 3-1 -- 25 points

The supervisor provides specific guidelines for each assignment. The employee works in strict adherence to guidelines; deviations must be authorized by the supervisor.

Level 3-2 -- 125 points

Procedures for doing the work are well established, and guidelines are available for reference, as needed. Guidelines consist of particular titles of law and related rules and regulations; agency manuals providing policy and procedures; and standard legal references such as law dictionaries, rules of practice of courts, digests, encyclopedias, and commentaries.

The paralegal specialist uses judgment in locating and selecting guidelines for application to individual assignments (e.g., determining which law or regulation applies, whether a violation occurred, whether action should be taken). When located, guidelines are usually specific to the situation at hand. However, in some instances the paralegal specialist applies judgment in making minor deviations (e.g., deciding to include supplemental clarifying information not specifically requested in a Freedom of Information request). Situations to which existing guidelines cannot be applied, which require significant deviations, or situations for which the guidelines are conflicting or ambiguous are referred to the supervisor.

Level 3-3 -- 275 points

Guidelines are generally available but do not appear to be completely applicable. For example, many factual situations or issues may be encountered that do not appear to be the same as earlier situations to which the guidelines could be specifically applied, or the connection between the factual situation and the cause of action or legal question is not clear.

The employee must search for appropriate guidelines from numerous sources (such as Federal laws, regulations, precedents, as well as State, municipal, county and local laws and ordinances of concern to the program), and use judgment regarding the depth and thoroughness of the search. Typically there are many related precedents that must be carefully analyzed to determine which most nearly fit the situation, and the employee must use considerable judgment in interpreting and adapting guidelines to specific issues.

Level 3-4 -- 450 points

In addition to guidelines described at lower levels, guidelines applied in many assignments at this level may be limited to basic legislation, implementing regulations, and agency policies which must be carefully analyzed for general application. The more specific guidelines mentioned at lower levels may be of limited use as the legislative histories or precedent decisions may be ambiguous or apparently in conflict.

The specialist must use initiative and resourcefulness in interpreting and applying guidelines and precedents in nonroutine situations without referring questions to others. In a number of

situations the specialist relies on past personal experience to evaluate the applicability of guidelines on issues where conflicting decisions have not been resolved or where factual situations vary so widely that it is highly questionable as to which precedents can be adapted to specific matters.

FACTOR 4, COMPLEXITY

This factor covers the nature, number, variety, and intricacy of tasks, steps, processes, or methods in the work performed; the difficulty in identifying what needs to be done; and the difficulty and originality involved in performing the work.

The work of paralegal specialists ranges from selected trainee assignments of one task involving several controlled analytical and evaluative steps, to work performed by employees with years of experience and special program expertise in resolving complex assignments over a period of months or years requiring highly developed skills and knowledge to find precedents, develop findings, and resolve expertly contested issues.

Complexity in paralegal assignments is caused by such variables as:

- the number of steps required, the factual and legal issues involved, and the intensity of the analysis of case files that is required;
- time restrictions;
- the adequacy of the preliminary investigation and factfinding;
- the volume of data and evidence to be catalogued, analyzed, stored, and retrieved;
- the degree to which previous policy, legal decisions, or court interpretations are applicable to the recommendations made; and
- the need to deal with entirely new programs or significant changes in policy.

Complications arise also from the need to consider various substantive program issues relating to the cases, such as physical disability factors, industrial practices, labor market considerations, ecological factors, or public communication needs.

Level 4-2 -- 75 points

Assignments consist of duties involving a few related steps or processes designed for developmental purposes to orient the specialist in the mission of the organization and the practical application of legal theory.

The paralegal specialist reads case files to become familiar with ongoing matters and litigation, looks up meanings of legal terminology, and locates citations to become familiar with the legal reference materials and finding aids. The specialist reviews documents to identify the material which may be pertinent to issues or cases; researches and extracts statistical data and narrative information relating to specified matters from records; summarizes findings orally, in writing, and through the construction of charts and other graphics; or completes other similar tasks.

Actions taken differ according to the nature or source of the information involved and choices are limited to such matters as the sequence of fact-finding steps and the manner or form in which to present findings. The assignments become increasingly more complex as the specialist's skill increases.

Level 4-3 -- 150 points

The work includes various duties involving different and unrelated processes and methods, such as case or issue analysis; legal research; interviewing claimants or potential witnesses; summarizing and explaining case files, depositions, or interrogatories; and preparing exhibits.

The specialist must analyze the information, identify missing information that requires additional research or investigation, identify the appropriate reference source, and develop plans necessary to complete the assignment.

The paralegal specialist must identify the legal or factual issues in the case or appeal, locate precedents, and develop a legally supportable conclusion.

Level 4-4 -- 225 points

At this level, paralegal specialists perform varied duties encompassing diverse and complex technical issues or problems (e.g., carries out case development and documentation activities as a case progresses through the administrative appellate system).

Factual situations vary significantly from assignment to assignment and are difficult to ascertain because there is a large body of interrelated facts to be analyzed, information from different sources is sometimes in conflict, only indirect evidence is available on some issues, and the interpretation of such evidence is disputed. The employee must devise or evaluate and adapt previous factfinding and problem-solving methods to cope with voluminous documentation, effectively organize data into exhibits, and develop corroborative evidence to fill gaps or resolve conflicting statements.

The employee must reconcile conflicting policies and facts, identify and elicit additional information, and make a number of decisions at various stages such as identifying issues; defining the problem in terms compatible with the laws, policies, or regulations; interpreting considerable data; and weighing facts in order to formulate a legally and factually supportable position. The work is further complicated by multiple assignments or the need to combine case development with other functions, such as digesting current legal proceedings on a daily basis. The employee must set priorities and plan work carefully to meet deadlines for each stage of the assignment.

Level 4-5 -- 325 points

At this level the paralegal specialist serves as a technical authority performing work which is characterized by a depth and variety of problem-solving analysis, interpretation, and evaluation

associated with the resolution of unusually complicated legal matters. For example, the paralegal specialist researches esoteric statutory, regulatory, court and/or administrative precedents, and other legal opinion or documentary material, interprets and evaluates equivocal or discrepant information collected from varied sources; develops and makes usable ambiguous or confused technical data and other supportive material; analyzes and synthesizes intricate evidence using a variety of quantitative and qualitative techniques; and prepares comprehensive reports which serve as the basis for critical legislative regulatory, judicial, administrative, or other legal arguments, interpretations, or opinions.

Decisions regarding what needs to be done require expertise in exploring and sorting out subtle or tenuous legal, technical, and/or program-related elements of cases or legal matters crucial to a line of argument upon which the case will be decided. For example, assignments are characterized by disputed factual technicalities; events that must be reconstructed from circumstantial evidence; nuances upon which legal outcomes are determined; or problems that have been particularly resistant to solutions in the past. Cases are likely to extend over a period of years, involve major areas of uncertainty in methodology or interpretation, or involve new legal and technical developments or questions on which decisions rendered in different jurisdictions are at variance.

The work requires the specialist to be especially versatile and innovative in responding to unanticipated changes in judicial and/or administrative law, policy, or program direction; in interpreting incomplete and conflicting information from varied sources; in developing evidence or surfacing previously overlooked technical data which alters the direction of legal arguments; and in devising new ways of presenting information to effectively resolve contentious issues.

FACTOR 5, SCOPE AND EFFECT

Scope and effect covers the relationship between the nature of the work i.e., the purpose, breadth, and depth of the assignments, and the effect or work products or services both within and outside the organization.

Effect measures such things as whether the work output facilitates the work of others, provides timely services of a personal nature, or impacts on the adequacy of research conclusions. The concept of effect alone does not provide sufficient information to understand and evaluate the impact of the position. The scope of the work completes the picture, allowing consistent evaluations. Only the effect of properly performed work is to be considered.

Level 5-1 -- 25 points

The purpose of the work is to provide the paralegal specialist with training in the practical application of basic concepts, methods, procedures, and guidelines of paralegal work. It involves the performance of specific, routine operations that include a few separate tasks or procedures, such as looking for specific items of factual information in subpoenaed documents and tabulating and summarizing data, or reviewing recent case decisions and summarizing the factual and legal issues and findings.

The work product facilitates the work of higher graded co-workers within the immediate employing office by relieving them of repetitive assignments.

Level 5-2 -- 75 points

The purpose of the work is to carry out specific procedures comprising a complete segment of a project of broader scope, such as initially reviewing formal complaints, identifying issues involved, and obtaining the information and documentation needed to prepare the case for analysis and development by other paralegal specialists or professional staff; or analyzing documents for supportive evidence, organizing findings, and writing synopses for use by an attorney.

The work product is used by higher graded staff members and can affect the accuracy of the overall analysis and development of the case.

Level 5-3 -- 150 points

The purpose of the work is to resolve problems or questions through application of established criteria and methods, such as reviewing matters to determine agency position in similar cases, deciding on and carrying out the necessary procedural steps, and recommending and justifying the need to pursue any further actions such as litigation.

The work product directly affects the unit's ability to meet production goals and to provide service to the public. Actions and recommendations affect the outcome of cases and the well-being of the individuals involved.

Level 5-4 -- 225 points

The purpose of the work is to (1) advise other paralegal specialists or professional staff on highly specialized problems of case development, interpretation of findings, or waiver of chain-of-title and documentation requirements; (2) monitor the consistency of case decisions throughout the agency and recommend the reopening of cases or the issuance of official agency interpretations, as necessary; or (3) researching unsettled issues and develop proposed agency positions. The work provides the foundation for precedents that have a broad impact (e.g., affect aspects of agency-wide programs or activities of a regulated industry).

FACTOR 6, PERSONAL CONTACTS

This factor includes face-to-face contacts and telephone and radio dialogue with persons not in the supervisory chain. (NOTE: Personal contacts with supervisors are covered under Factor 2, Supervisory Controls.) Levels described under this factor are based on what is required to make the initial contact, the difficulty of communicating with those contacted, and the setting in which the contact takes place (e.g., the degree to which the employee and those contacted recognize their relative roles and authorities).

Above the lowest level, points should be credited under this factor only for contacts which are essential for successful performance of the work and which have a demonstrable impact on the difficulty and responsibility of the work performed.

The relationship of Factors 6 and 7 presumes that the same contacts will be evaluated for both factors. Therefore, use the personal contacts which serve as the basis for the level selected for Factor 7 as the basis for selecting a level for Factor 6.

Level 6-1 -- 10 points

The personal contacts are primarily with employees within the immediate work unit and in related or serviced units.

Level 6-2 -- 25 points

The personal contacts are with employees in other parts of the agency such as agency program specialists and with people outside the agency in a moderately structured setting, as, for example, with legal counsel for appellants.

Level 6-3 -- 60 points

Personal contacts are generally with claimants, appellants, their attorneys, potential witnesses, and industry representatives in moderately unstructured situations where each contact is different and the specialist must define the purpose of the meeting and clarify the roles of the various participants. Contacts may be initiated by the specialist, the person requesting information or assistance, or another party and frequently involve unstructured face-to-face meetings.

FACTOR 7, PURPOSE OF CONTACTS

The purpose of personal contacts ranges from factual exchanges of information to situations involving significant or controversial issues and differing viewpoints, goals, or objectives. The personal contacts which serve as the basis for the level selected for this factor must be the same as the contacts which are the basis for the level for Factor 6.

Level 7-1 -- 20 points

The purpose is to obtain, clarify, or give facts or information relating to such matters as work assignments, types of cases that have been filed, and appearance dates. For example, employee ascertains missing or additional documentation needed from such sources as the general counsel's office, regional and district offices, or other agency components, and requests this material.

Level 7-2 -- 50 points

The purpose of contacts is to meet with potential witnesses to prepare them for, and provide information about, court appearances or to explain current agency practices in regard to litigating cases or reopening appeals; to plan and coordinate assignments requiring the cooperation of employees in several agency offices, such as assembling data from different sources to prepare exhibits or to respond to interrogatories, subpoenas, depositions, or other activities; or to persuade other agency personnel with different viewpoints on the merits of releasing or withholding portions of documents requested under provisions of various acts.

Level 7-3 -- 120 points

The purpose of contacts is to motivate persons who may be fearful or uncooperative to testify at hearings or in court appearances or to provide critical information, such as that needed to develop aspects of a case or to locate missing witnesses or defendants; to gain voluntary compliance or agreement with persons or groups who have divergent allegiances, interests, or objectives; to convince persons of the correctness of factual, technical, procedural, or other interpretations despite the existence of other differing interpretations and legal positions; or to otherwise influence skeptical or uncooperative persons by the use of tact, persuasiveness, and diplomacy in controversial legal situations.

FACTOR 8, PHYSICAL DEMANDS

The "Physical Demands" factor covers the requirements and physical demands placed on the employee by the work assignment. This includes physical characteristics and abilities (e.g., specific agility and dexterity requirements) and the physical exertion involved in the work (e.g., climbing, lifting, pushing, balancing, stooping, kneeling, crouching, crawling, or reaching). To some extent the frequency or intensity of physical exertion must also be considered, e.g., a job requiring prolonged standing involves more physical exertion than a job requiring intermittent standing.

Level 8-1 -- 5 points

The work is sedentary. Typically, the employee may sit comfortably to do the work. However, there may be some physical activity such as walking, standing, bending, carrying of light items such as papers and books, and driving an automobile. No special physical demands are required to perform work.

Level 8-2 -- 20 points

There is a recurring requirement for lifting moderately heavy items such as typewriters or boxes of records.

FACTOR 9, WORK ENVIRONMENT

The "Work Environment" factor considers the risks and discomforts in the employee's physical surroundings or the nature of the work assigned and the safety regulations required. Although the use of safety precautions can practically eliminate a certain danger or discomfort, such situations typically place additional demands upon the employee in carrying out safety regulations and techniques.

Level 9-1 -- 5 points

The work environment involves everyday risks or discomforts which require normal safety precautions typical of offices and meeting rooms, e.g., use of safe work practices with office equipment, avoidance of tripping and falling, and observance of fire regulations. The work area is adequately lighted, heated, and ventilated.

Level 9-2 -- 20 points

There is a regular and recurring requirement during investigation and factfinding phases to visit industrial worksites where employees are engaged in manufacturing or other processes. There is exposure to high noise levels, heat, and fumes, and a need to use safety helmets, goggles, coveralls, or similar protective gear.

OPM BENCHMARK DESCRIPTIONS

PARALEGAL SPECIALIST, GS-0950-5, BMK # 01

Duties

As a trainee, is assigned a variety of duties intended to provide the employee with a good working knowledge of agency programs, policy, regulations, and implementing legislation. In this capacity, the employee:

- Consults prescribed sources of information for facts relating to matters of interest to the program;
- Reviews documents to extract selected data and information relating to specified items;
- Reviews and summarizes information in prescribed format on case precedents and decisions;

- Searches for and extracts legal references in libraries and computer data banks; and,
- Attends hearings or court appearances to become informed on administrative or court procedures and the status of cases, and where necessary, assists in the presentation of charts and other visual information.

Factor 1, Knowledge Required by the Position -- Level 1-5 -- 750 points

As a trainee paralegal specialist, applies: a general knowledge of the major statutory provisions pertaining to the work of the organization, and the principal agency implementing regulations, policies, and practices; a knowledge of standard legal reporting services and citation systems sufficient to perform assignments selected to develop the employee and to assist higher graded employees by gathering and summarizing information on specific issues; and skill in the use of factfinding techniques, and in the analysis and presentation of the information obtained.

Factor 2, Supervisory Controls -- Level 2-1 -- 25 points

The specialist is given assignments with specific instructions on how to complete the assignment and guidance on the application and interpretation of laws, regulations, and procedures.

The specialist works as instructed, consulting with the supervisor on any problems that arise.

The supervisor reviews the completed work for accuracy, proper presentation, and conformance to instructions.

Factor 3, Guidelines -- Level 3-1 -- 25 points

Assignments are such that available guidelines clearly apply to the assignment.

Any deviation from the guidelines must be approved by the supervisor.

Factor 4, Complexity -- Level 4-2 -- 75 points

Assignments are typically selected to provide specific types of practical experience and exposure to particular legal situations and problems. Assignments are to gather and summarize specific information or to perform routine or repetitive tasks to assist higher level staff. The specialist reviews pertinent legal documents, determines what portion of the material is related to issues under consideration, and extracts and summarizes material for the supervisor or higher level staff members.

Decisions regarding what needs to be done include choices on the order of research necessary, the sequence of analytical steps, and the manner in which findings are presented.

Actions to be taken are routine and choices of a course of action are limited since the problem can usually be solved through clearly applicable precedent assignments. The assignments

usually differ somewhat depending on the factual situation, the particular principle that applies, or the type of case.

Factor 5, Scope and Effect -- Level 5-1 -- 25 points

The primary purpose of the work is to provide on-the-job training in the use of research and analytical tools and the mission of the organization.

The employee is given specific, well-defined tasks comprising one or more segments of the legal proceedings of the agency. In completing these assignments, the employee provides assistance to other employees in the unit by performing the more routine aspect of operations.

Factor 6, Personal Contacts -- Level 6-1 -- 10 points

Contacts are primarily with co-workers in the immediate office. Occasionally, in a highly structured training situation, there are contacts with employees in private firms or the general public.

Factor 7, Purpose of Contacts -- Level 7-1 -- 20 points

The purpose of the contacts is to obtain or provide factual information.

Factor 8, Physical Demands -- Level 8-1 -- 5 points

Duties are usually performed while sitting at a desk or table. There are frequent requirements for some physical activity such as carrying boxes of records weighing up to 5 kilograms (10 pounds), stooping to extract records from files, or carrying and setting up display easels in hearing rooms.

Factor 9, Work Environment -- Level 9-1 -- 5 points

Work is usually conducted in an office, adequately lighted and climate controlled.

TOTAL POINTS -- 940

PARALEGAL SPECIALIST, GS-0905-7, BMK #01

Duties

Serves as a paralegal specialist in an office providing legal assistance to attorneys. In this capacity:

- Reviews case materials to become familiar with questions under consideration;

- Searches for and summarizes relevant articles in trade magazines, law reviews, published studies, financial reports, and similar materials for use of attorneys in the preparation of opinions, briefs, and other legal documents;
- Prepares digests of selected decisions or opinions which incorporate legal references and analyses of precedents involved in areas of well-defined and settled points of law;
- Interviews potential witnesses and prepares summary interview reports for the attorney's review;
- Participates in pre-trial witness conferences, notes any deficiencies in case materials (e.g., missing documents, conflicting statements) and additional issues or other matters requiring investigation prior to trial, and requests further investigation by other agency personnel to correct deficiencies or personally conducts limited investigations at the pre-trial stage;
- Prepares and organizes trial exhibits, as required, such as statistical charts and photographic exhibits;
- Verifies citations and legal references on prepared legal documents;
- Prepares summaries of testimony and depositions; and
- Drafts and edits nonlegal memoranda, research reports, and correspondence relating to cases.

Factor 1, Knowledge Required by the Position -- Level 1-6 -- 950 points

A knowledge of statutes, regulations, precedents, and practices relating to the mission of the organization sufficient to identify the factual and legal issues and the relevant evidence and to prepare summaries of precedent cases, interviews, and related case material for the attorney's use.

A knowledge of legal reference sources and commonly used legal research procedures and methods sufficient to locate, analyze, and prepare reports on pertinent statutes, court decisions, legal opinions, and other legal documents.

Factor 2, Supervisory Controls -- Level 2-2 -- 125 points

The specialist receives instructions from attorneys regarding the steps involved in the assignment, the general legal concepts involved, general direction on the goal to be obtained, and possible resources.

The specialist uses initiative in carrying out routine assignments covered by established procedures, but is expected to consult with the supervisor when unusual problems are encountered.

Completed work is reviewed for adequacy of format, for soundness of judgment, and for adherence to appropriate instructions.

Factor 3, Guidelines -- Level 3-2 -- 125 points

Guidelines include the basic enabling legislation of the office, office procedural manuals, and appropriate references in the law library. Guidelines require interpretation and selection of the most appropriate references and procedures for the various factual situations involved. The supervisor is generally available for assistance when significant deviations from guidelines appear to be required.

Factor 4, Complexity -- Level 4-2 -- 75 points

Assignments include review and analysis of case material to locate relevant references and supporting documentation, interviewing of possible witnesses, preparation of exhibits, and drafting legal documents such as briefs and opinions for an attorney's use.

Decisions regarding what needs to be done are generally limited to choosing the sequence of steps for completing an assignment and selecting between several analytical and/or legal research methods.

Actions to be taken vary somewhat depending on the factual situation of each assignment, the legal issues involved, and the problem to be solved.

Factor 5, Scope and Effect -- Level 5-2 -- 75 points

The work of the employee consists of individual aspects of the case work of the office and is designed to provide the opportunity to participate in the application of various laws, regulations, etc., in diverse situations.

The completed work is used by professional staff in the development and presentation of their cases.

Factor 6, Personal Contacts -- Level 6-3 -- 60 points

Contacts are with fellow employees, attorneys for defendants, and with potential witnesses or sources of information where the employee must establish rapport and be skilled in interviewing techniques.

Factor 7, Purpose of Contacts -- Level 7-1 -- 20 points

The employee contacts fellow workers to obtain and provide information relating to case activities. Contacts with attorneys for defendants are to provide routine information such as court appearance dates or lists of witnesses. Contacts with potential witnesses are for the purpose of assisting in evaluating their worth as witnesses.

Factor 8, Physical Demands -- Level 8-1 -- 5 points

Work is generally sedentary, in an office setting, with no requirement for other than ordinary physical activity such as extracting files and carrying case folders from one office to another.

Factor 9, Work Environment -- Level 9-1 -- 5 points

Work is performed in areas that are adequately lighted and climate controlled and where normal safety precautions for an office are practiced.

TOTAL POINTS -- 1440

PARALEGAL SPECIALIST, GS-0950-9, BMK # 01

Duties

Participates in the substantive development of cases in an office conducting enforcement activities by performing the following functions:

- Analyzes and evaluates case files against case litigation worthiness standards;
- Notes and corrects case file deficiencies (e.g., missing documents, inconsistent material, leads not investigated) before sending the case on to the concerned trial attorney;
- Reviews and analyzes available precedents relevant to cases under consideration for use in presenting case summaries to trial attorneys;
- Gathers, sorts, classifies, and interprets data from private enterprise and labor organizations to discover patterns of possible discriminatory activity;
- Interviews industrial and union representatives, employees, and potential witnesses to gather information;
- Reviews and analyzes relevant workforce statistics;
- Performs statistical evaluations such as standard deviations, "t" tests, analyses of variance, means, modes, and range as supporting data for case litigation;
- Consults with statistical experts on reliability of statistical evaluations; and
- Testifies in court concerning relevant data.

Factor 1, Knowledge Required by the Position -- Level 1-6 -- 950 points

Knowledge of the principles, concepts, and methods of legal research and analysis sufficient to perform recurring case development and documentation assignments which are typically covered by established precedents. Knowledge of the litigation activities of the agency and of statistical techniques sufficient to gather and analyze data and to evaluate its usefulness in resolving legal issues.

Knowledge of interviewing techniques sufficient to interview potential witnesses, industry and union representatives, workers, and other sources of information and skill in developing evidence to support the agency's litigation activities.

Ability to communicate effectively and prepare legal briefs and summaries of analyses.

Factor 2, Supervisory Controls -- Level 2-3 -- 275 points

Work is assigned by the supervisor with deadlines, precedents, and objectives defined.

The employee independently carries out the assignments, including selection of methods, approaches, problem solving, and other related activities. The employee brings unprecedented problems and proposed solutions to the supervisor's attention.

Work is periodically reviewed for its applicability to the case under consideration, and for the soundness of the employee's decisions.

Factor 3, Guidelines -- Level 3-3 -- 275 points

Guidelines consist of applicable titles of the law, implementing regulations, agency manuals and directives, agency precedent decisions, court decisions, commercial legal publications, as well as appropriate issuances from other interested agencies.

The employee uses judgment in selecting and adapting guidelines to specific situations and cases and recommends changes in the manner of analyzing and preparing similar cases.

Factor 4, Complexity -- Level 4-3 -- 150 points

Assignments consist of a variety of analytical duties such as developing and carrying out plans to gather information through such means as interviews, review of reports, and surveys; analyzing the information collected; conducting legal research concerning precedents and past court decisions; checking citations; preparing evidence and exhibits; and developing and justifying recommendations.

Each assignment requires the paralegal specialist to select factfinding and research tools appropriate to the particular assignment in terms of types of data available, difficulty in obtaining data, time restraints, and the degree of expected cooperation from the particular firm or group being evaluated.

These duties require the paralegal specialist to search for, isolate, evaluate the relevance of, and summarize available information and its usefulness in resolving issues.

Factor 5, Scope and Effect -- Level 5-2 -- 75 points

The purpose of the work is to gather, arrange, analyze, evaluate, and control information and evidence needed for case processing.

Successful accomplishment of the work facilitates the work of trial attorneys in such matters as litigation and in achieving settlements, conciliations, or consent decrees. The accuracy of the paralegal specialist's activities contributes to the litigation worthiness of a case and the specialist's credibility as a trial witness.

Factor 6, Personal Contacts -- Level 6-3 -- 60 points

Contacts are with charging parties, respondents and their attorneys, company officials, court employees, officials of labor organizations, and others.

Factor 7, Purpose of Contacts -- Level 7-3 -- 120 points

Contacts are to obtain factual information; to advise on progress achieved in securing supportive case data; and to obtain information required for discovery including interrogatories, subpoenas, depositions, and other related tasks. The employee frequently must be persuasive or apply skillful interrogation to obtain necessary information required to support the agency's litigation, conciliation, settlement, and other program efforts. Individuals interviewed by the paralegal specialist in developing supportive case data may be hostile or try to avoid involvement.

Factor 8, Physical Demands -- Level 8-1 -- 5 points

While much of the work is sedentary, there are occasional requirements for moderate physical activity, such as lifting stacks or boxes of records and for carrying heavy or unwieldy objects such as display easels into courtrooms for exhibits.

Factor 9, Work Environment -- Level 9-2 -- 20 points

Work is generally conducted in an office atmosphere, but there are recurring on-site visits to industrial firms where the employee is exposed to such hazards as moving machinery, high noise levels, and chemical irritants requiring the use of protective clothing.

TOTAL POINTS -- 1930

PARALEGAL SPECIALIST, GS-0950-11, BMK #01

Duties

Assists in the evaluation, development and litigation of discrimination cases, by performing the following duties:

- Examines and evaluates information in case files, with reference to agency standards for case litigation worthiness and appropriate titles of law;
- Determines the need for additional information, independent surveys, evidence, and witnesses, and plans a comprehensive approach to obtain this information;
- Through onsite visits, interviews, and review of records on operations, looks for and evaluates the relevance and worth of evidence;
- Selects, summarizes, and compiles comparative data to examine and evaluate respondent's deficiencies in order to provide evidence of illegal practices or patterns;

- Reviews economic trends and forecasts at the national and regional level to evaluate the impact of successful prosecution and potential remedial provisions of ongoing investigations and litigation;
- Identifies types of recordkeeping systems and types of records maintained which would be relevant to providing violations; gathers, sorts and interprets data from various record systems including computer information systems of business and labor organizations to substantiate questionable patterns of systemic discrimination in cases under investigation;
- Interviews respondents to obtain information on company practices. Interviews potential witnesses for information and prepares witnesses for court appearances;
- Develops statistics and tabulations, such as standard deviations, regression analyses, and weighting, to provide leads and supportive data for case litigation. Prepares charts, graphs, and tables to illustrate results;
- Analyzes data, develops recommendations and justifications for the attorney(s) who will take the matter to court. Continues to work with the attorney(s) during the progress of the case, obtaining and developing further evidence and exhibits, providing administrative assistance, and maintaining custody of exhibits, documents, and files; and
- May appear in court as a witness to testify concerning exhibits prepared supporting plaintiff's case.

Factor 1, Knowledge Required by the Position -- Level 1-7 -- 1250 points

Knowledge of the application of various titles of law applicable to agency mission, Federal and State laws governing or impacting on the program, and significant national and local developments in the field; and knowledge of legal reference sources in agency manuals, directives, and issuances, computerized reference sources, court and/or administrative decisions and precedents, and commercial legal publications sufficient to perform extensive legal research into the legislative history, precedent cases, decisions, and opinions that may be applicable; to interpret, explain, and present, orally or in writing, relevant findings and conclusions using appropriate language, legal reasoning, and organization of facts and ideas; and to assist in case preparation.

Basic knowledge of statistical and mathematical concepts and processes to develop or evaluate statistical evidence.

A working knowledge of economic principles, theories, indicators, and statistics sufficient to use these as tools in analyzing industrial practices and in evaluating compliance initiatives.

Factor 2, Supervisory Controls -- Level 2-3 -- 275 points

Work is assigned by the supervisor with deadlines, possible precedents, and objectives defined.

Actual accomplishment of the work, including methods, approaches, problem solving, and other related functions is independently completed by the employee. Unprecedented problems or occurrences are generally brought to the supervisor's attention, along with proposed solutions.

Work is generally reviewed for its applicability to the case under consideration and for the soundness of decisions or conclusions. The methods used are not normally reviewed in detail.

Factor 3, Guidelines -- Level 3-4 -- 450 points

Guidelines are numerous, typical of those found in a law library, and consist of applicable legislation, court decisions, commercial legal publications, as well as agency manuals, directives, and precedent decisions and issuances from other interested agencies.

The specialist relies on a sense of current agency interests and priorities in determining the depth of analysis needed and the amount of time to spend in locating possible precedents. Guidelines are not easily applied to the varied situations encountered, since they may only partially relate to the circumstances or may have been significantly limited in usefulness by later decisions or interpretations. The specialist's findings serve to modify and augment existing agency guidelines and provide the basis for new or modified evaluation criteria.

Factor 4, Complexity -- Level 4-4 -- 225 points

Performs a wide variety of duties involved in evaluating potential cases for investigation and prosecution.

The duties require the analysis of preliminary case files to determine appropriateness of prosecution in terms of agency litigation worthiness standards; evaluation of respondent's work force to determine presence of discriminatory practices or patterns; evaluation of the impact of successful prosecution and potential remedial provisions in terms of economic trends and forecasts; searching for and identifying recordkeeping systems which would clarify discriminatory practices; the examination, evaluation, and analysis of records; the preparation of recommendations with justifications, exhibits, statistics, etc.; interviewing respondents and witnesses; and drafting various legal documents such as interrogatories.

Considerable ingenuity is required in devising and adapting analytical approaches to the complexities of various recordkeeping systems encountered, or in coping with either the absence of data or the availability of vague data which does not directly provide the necessary information to determine suitability of evidence for establishing systemic discriminatory practices or to make recommendations on case litigation worthiness.

Factor 5, Scope and Effect -- Level 5-3 -- 150 points

Because of workload considerations, the volume of records involved, and the scheduling of hearings and court appearances outside the control of the agency, the employee often has the major responsibility for developing sufficient evidence, evaluating its relevance and worth, and briefing attorneys prior to hearings on appropriate findings and suggested approaches. The specialist's individual record of success in similar proceedings permits this kind of reliance.

The work affects the economic security of parties to the suit and, in some cases, contributes to changes in employment practices.

Factor 6, Personal Contacts -- Level 6-3 -- 60 points

Contacts are with charging parties, respondents and their attorneys, witnesses, company officials, and industry representatives. Contacts are maintained on a continuing basis with officers of courts, officials of labor organizations, and community groups.

Factor 7, Purpose of Contacts -- Level 7-3 -- 120 points

Contacts are to secure supportive case data and to obtain information needed to litigate cases through direct or indirect means. Individuals dealt with may be uncooperative or even hostile to the Government's position, or unwilling to talk due to fear of reprisal or reluctance to be involved with the legal action.

Factor 8, Physical Demands -- Level 8-1 -- 5 points

Work is generally sedentary with no requirement for other than ordinary physical activity, such as bending and stooping to insert or extract files or carrying case folders from one office to another.

Factor 9, Work Environment -- Level 9-2 -- 20 points

Work is generally performed in an office, which is adequately lighted and climate controlled. There are regular and recurring visits to industrial worksites where the employee is subjected to noise, outside weather conditions, fumes, heat, or other conditions which may require the use of protective clothing such as helmets and goggles.

TOTAL POINTS -- 2555

PARALEGAL SPECIALIST, GS-0950-11, BMK #01

Duties

Serves as a paralegal specialist in a regional office with responsibility for the analysis and evaluation of claims and other matters arising from various legislative acts (e.g., Federal Tort Claims Act, Civilian Employees' Claims Act, Freedom of Information Act, Privacy Act). Selects, assembles, summarizes, and compiles substantive information by use of statutes, regulations, department orders, digests, commentaries, legal instruments, and other legal reference material. Assists in case preparation for litigation and analyzes facts and legal questions.

In this capacity:

- Receives, analyzes, investigates, and recommends action on submissions under various tort claim acts. Reviews all investigative materials compiled;

- Examines and evaluates requests for information under the Freedom of Information and Privacy Acts; researches relevant legislation, regulations, and precedents; and determines if documents or segregable portions of them can be released. Substantiates rationale for position taken in event of appeal;
- Reviews changes in regulations on the Freedom of Information and Privacy Acts and updates and advises other legal personnel and field staff of changes. Consults and assists in formulation of agency regulations regarding the release of information;
- Consults with other Federal and State agencies regarding the Freedom of Information and Privacy Act regulations and related cases and requests, and coordinates related law suits with staff attorneys of other departments;
- Prepares litigation reports in connection with lawsuits filed against the agency. Summarizes the factual situation, the basis of the complaint, legal issues presented, and relevant case law. Recommends and justifies agency position in regard to the lawsuit. Collects additional facts from staff. Prepares various affidavits (e.g., on action taken by staff, failure of plaintiff to exhaust administrative remedies). Obtains answers to interrogatories and matters relative to discovery;
- Provides information to the legal staff on civil and constitutional rights of inmates and administration of correctional facilities.
- Analyzes inmate grievances and complaints relative to facts, issues, and applicable policy; obtains additional facts and information; researches legislation, policy, and case law; develops appropriate conclusions and justifications; and prepares response; and
- Reviews, analyzes, and recommends appropriate regional response on inmate appeals. Requests further information where needed. In responses to correctional institutions, suggests alternate ways of dealing with similar situations to avoid further appeals.

Factor 1, Knowledge Required by the Position -- Level 1-7 -- 1250 points

Knowledge of the various titles of law applicable to agency mission, Federal and State laws governing or impacting on the program, and significant national and local developments in the field.

Knowledge of legal reference sources in agency manuals, reference systems, directives, issuances, precedent decisions, court decisions, and commercial legal publications sufficient to perform extensive and thorough legal research into the legislative history, precedent cases, decisions and opinions that may be applicable; to evaluate the relevance of and summarize substantive information; to assist in case preparation; and to insure that information is lawfully released or withheld.

Knowledge concerning document control and security measures at the institutional level in order to insure against the release of any investigative information which would endanger pending prosecution, the orderly and safe operation of the institution, or endanger the lives or physical well-being of institutional staff.

Factor 2, Supervisory Controls -- Level 2-4 -- 450 points

Work is under the general supervision and administrative control of the regional counsel who delineates areas of responsibility, outlines possible approaches, and is generally available for assistance on problems that arise.

In matters relating to tort claims and release of information, the specialist must meet deadlines established by statute. Otherwise, the specialist is expected to plan and conduct work activities independently, resolve problems, and interpret policy on own initiative.

Completed work is prepared for administrative signature and is considered to be accurate with respect to legal citations, substantiating statistics, and facts. Work is reviewed for effectiveness in meeting program requirements and, on occasion, for feasibility of approach. The employee's advice on technical aspects of release of records is considered authoritative.

Factor 3, Guidelines -- Level 3-3 -- 275 points

Guidelines consist of agency legal reference systems including applicable legislation, Code of Federal Regulations, agency policy and directives, and appropriate issuances such as rules on Freedom of Information and Privacy Act related matters.

The specialist must use trained judgment in interpreting and adapting from the underlying principles, purpose, and intent of the guidelines in order to arrive at a satisfactory conclusion.

Factor 4, Complexity -- Level 4-4 -- 225 points

Work involves varied activities associated with the development of appropriate and defensible legal bases, supporting evidence, and other information used to determine entitlement to claims and release of agency documents, to resolve inmate grievances, and to provide support for litigation.

Determines the legal, policy, and administrative issues involved and the nature of the analysis and legal research required to come to a successful conclusion and to support recommendations.

The specialist must analyze numerous conflicting statements of fact and opinion regarding problems arising from litigation, claims activities, and resolution of inmate grievances through the adaptation and modification of conventional practices and the development of new approaches consistent with statutes administered by the agency as well as agency policy, regulations, and practices. Creativity and ingenuity are required in resolving and justifying contested issues, in gaining support for decisions, and in insuring that paralegal activities are responsive to agency needs.

Factor 5, Scope and Effect -- Level 5-3 -- 150 points

The work involves the evaluation of claims and requests for information and the development of recommendations or necessary actions to dispose of claims and requests.

The work supports and facilitates the work of agency attorneys and U.S. Attorney's Offices in litigation and Freedom of Information, Privacy Act, and tort related matters. The specialist's decisions, evaluations, and examinations of cases contribute materially to the formulation of the agency's legal position and the perfection of internal legal processes.

Factor 6, Personal Contacts -- Level 6-3 -- 60 points

Contacts are with agency officials, the general public, attorneys, Federal offenders, and former offenders. Further contacts are made on a recurring basis with U.S. Attorney personnel, State department of corrections personnel, foreign penal authorities, officers of both State and Federal courts, and Federal and State law enforcement and probation personnel.

Factor 7, Purpose of Contacts -- Level 7-2 -- 50 points

Contacts are to obtain and supply information on required discovery including interrogatories, subpoenas, depositions and other related tasks; to advise on progress achieved in securing supportive case data or to provide advice on Federal statutes and agency regulations and policy regarding disclosure of inmate or investigative records and to suggest approaches to handling institution problems which have contributed to grievances, appeals, and litigation. The specialist must persuade other regional or higher level personnel who have different opinions to adopt more effective ways of dealing with potential problem situations.

Factor 8, Physical Demands -- Level 8-1 -- 5 points

Work is generally sedentary with no requirement for other than ordinary physical activity, such as extracting files and carrying case folders from one office to another.

Factor 9, Work Environment -- Level 9-2 -- 20 points

Work is generally performed in an office which is adequately lighted and climate controlled. There are recurring visits to Federal correctional facilities where rigid safety precautions must be observed.

TOTAL POINTS -- 2485

EXPLANATORY MEMORANDUM

This memorandum is published to provide interpretive information regarding the contents of the position classification standard for the Paralegal Specialist Series, GS-950. The memorandum does not contain evaluation criteria. It furnishes background information intended to help users better understand and apply the standard and explain the standard to employees and managers.

INTRODUCTION

Draft classification and qualification standards for the Paralegal Specialist Series, GS-950, were distributed for comment and test application in June 1981. Copies were sent to all Federal agencies, various paralegal training institutions, employee organizations, professional groups, and interested individuals. Comments were received from 25 Federal departments and agencies (plus 20 additional comments forwarded directly by constituent parts of these agencies), 6 employee and professional groups, and 15 individuals.

This memorandum summarizes the major points in the comments received and explains the revisions made in the standard as a result of the comments.

Significant comments, suggestions, and changes to the draft standards are the following:

ISSUES RAISED

A. Coverage

By far the most prevalent comment was that the series definition was too narrow and it excluded too many positions from coverage of the series. We received 32 separate comments that the series definition was so narrow that many agency positions would be excluded. Along with this was the comment that if the series coverage was to remain narrow in focus as in the draft, then we should develop additional series and series definitions to include the positions that would be excluded.

Based on the near unanimity of opinion, we considerably broadened the series coverage criteria to include all two-grade interval legal assistant type positions that belong in the GS-900 Group for which specific series do not exist. This would include positions involved in such activities as analyzing requests for information under the Freedom of Information Act and positions involving the analysis and writing of regulations and legislation. (NOTE: Such jobs are classifiable in the appropriate subject matter series when subject matter knowledge either predominates or is equal to paralegal knowledge.)

B. Exclusions

Comment: One reviewer suggested that a paragraph be added to exclude GS-904 Law Clerk Series work

Response: The existing series definition for the GS-904 Law Clerk Series is adequate for that purpose.

C. Factor Level Descriptions

Comment: One commenter requested that a Knowledge level of 1-8 and a 3-5 level of Guidelines be included in the final standard as they were included in a "preliminary draft" which was circulated to a few agencies prior to the release of the official draft standard to all agencies.

Response: Closer analysis did not reveal these levels to be a typical occurrence or sufficiently representative of jobs in the various agencies. Statistics show that the majority of nonsupervisory positions in this series that -- generally -- would require these levels, i.e., GS-13 and GS-14, are concentrated in one agency. Thus, (1) the positions do not display sufficient commonality to form the basis for a general description of these factors, especially Knowledge level 1-8; (2) it is not necessary to establish Government-wide grade level criteria to cover positions in one agency; (3) when we attempted to describe these levels they appeared to be exceptionally close to the situations found in positions in the professional practice of law; and (4) positions containing these levels can be evaluated by reference to factor level definitions in the Factor Evaluation System Primary Standard and by cross-reference to other FES standards as indicated in the GS-0950 standard.

D. Benchmark Descriptions

Comment: A range of comments was received on the limited number of benchmark descriptions in the draft. Some respondents thought they were helpful but directly applicable to only a small percentage of their positions.

Response: Because of the heterogeneous and evolving nature of the paralegal occupation -- especially with the broadened scope of series coverage provided in the final standards -- it has not been possible to locate benchmarks which 1) can be considered "typical" of work in the series and 2) that also have general applicability across agency lines. An additional problem with a "catch-all" series such as the GS-0950 is that some positions that might otherwise be candidates for benchmarks would be classified in another series, if the emphasis on knowledge requirements were slightly different. Since benchmark descriptions are regarded by users of the standards as occupational models for positions in the series, we endeavor to be quite certain that the positions included as benchmarks in a standard are sufficiently typical and applicable within the occupation to live up to user expectations and that they don't send the wrong signals.

Although the benchmarks provided in the standard cover a relatively small proportion of the positions in the series, we anticipate that they will be useful as illustrations of typical patterns of factor level descriptions. We have added a GS-11 benchmark description in place of the GS-12 benchmark featured in the tentative standard whose factor level descriptions were considered atypical. And, concerning grade levels, it should be stressed that the absence of benchmark examples above the GS-11 in no way precludes the classification of paralegal jobs at higher levels when the duties and responsibilities of the position warrant such classification.

Issue: One commenter felt that the description of factor level 4-5 of Complexity was more a listing of assignment tasks than a factor description.

Response: Factor level 4-5 has been extensively revised to remedy the defect noted.

General: Other factor level descriptions have been modified -- some editorially, and other substantively -- in response to helpful suggestions of commenters.

E. Qualifications Required

Comment: Most commenters agreed that we should continue the practice of allowing a law degree to fully qualify for GS-9.

Response: We are continuing to allow the substitution of LL. B., J. D., or higher law degree from a recognized law school as fully qualifying for the GS-9 level. Lesser amounts of law school education may be substituted on a time equivalent basis for the first year of specialized experience which is qualifying at GS-7.

Comment: Several comments favored the substitution of paralegal training in certain educational facilities and institutions for specialized experience.

Response: When the interim standard was developed in 1975, few institutions other than law schools, which had graduate level curricula, offered paralegal training. Because of this, and also because many paralegals had already obtained a baccalaureate degree or had equivalent experience prior to taking paralegal courses, it was decided on an interim basis, to credit paralegal courses at the graduate level. Now there are a variety of paralegal schools and curricula available, with most courses equivalent to the undergraduate level. While some courses may be similar to those taught in law schools, it is not practicable for us to develop, update, and continually maintain, criteria which would differentiate among graduate level and undergraduate level paralegal courses. Because the accepted and prevailing practice is that only graduate level education is substituted for specialized experience, we must change the type of experience for which non-law school paralegal course work can be substituted from specialized to general.