

An Update From the CCRA-NJ

A Message from the CCRA-NJ President - The Final Battle

We would like to update you regarding the years-long litigation with the NJ Department of Workforce and Labor (DOL) and where it stands now. We also need your help to get across the finish line.

RECAP: As most of you know, in earlier decisions and a gain in 2010, the NJ Legislature categorized court reporters as independent contractors. That was, and still is, the "law of the land." The DOL has ignored that law, continuing to audit both agencies and reporters in an attempt to prove the employer/employee relationship.

Over many years, two court reporting agencies (State Shorthand and Jersey Shore) have challenged the DOL in the Office of Administrative Law (OAL). Their cases have been tried before two OAL Judges, both of whom found in favor of the agencies/reporters that they do not have an employer/employee relationship.

However, in a system overshadowed with thick irony, the final arbiter of those decisions is the Commissioner of the DOL, Robert Asaro-Angelo. How the head of the defendant agency in a lawsuit can overrule the judge's decision is a discussion for another day, but that is exactly what he did.

There is good news and bad news. The bad first. Governor Murphy has formed a task force to "identify the non-compliers and make them pay back taxes, or put them out of business." Words like "criminal consequences" have come out of Trenton. With the Commissioner's decision to overturn the judges' decisions in favor of court reporters, the auditing process – which had been primarily under a stay until the completion of the litigation in the OAL – have begun again.

The good news is that ALL of this was expected, and the main goal of both agencies along with CCRA-NJ as amicus participator was to get out of the OAL and into the Superior Court Appellate Division, where there are no judges beholden or employed by the OAL, and where only the law as written by the NJ Legislature granting court reporters independent contractor status, will be considered.

Both the legal teams and other attorneys familiar with the case feel the Appellate Court will rule with the law as written by the NJ Legislature.

Over the past two weeks, both State Shorthand and Jersey Shore Reporting have filed their respective cases in the Appellate Division, and CCRA-NJ intends to join in that fight with our attorney, Andrew Berns of Einhorn Barbarito.

The estimated cost for our participation is approximately \$30,000 to \$35,000. We need the help of all agencies and all reporters, as we are in the final stretch here and are finally out from under the thumb of decisions being made by the interested party (DOL) and in a court of law, that will consider only the facts and law.

CCRA-NJ is asking every agency owner and every individual Certified Court Reporter to donate to the expenditure needed to fight this issue and bring it to a close once and for all.

We know many of you have donated in the past, and we are grateful for that; however, this is not the time to drop the ball when we are fighting for the future of court reporting and there is light at the end of the tunnel. All donations are anonymous for anyone with concerns in that area; and all donations are used exclusively for this legal issue.

Jennifer Billstein-Miller, RMR, CCR-NJ, CRR
CCRA-NJ President



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PO Box 460
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In the memo field, please write
DOL audit fund.

Suggested Donation Amounts:

Agencies: \$1,000 - \$5,000
Court Reporters: \$25-\$1,000

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I GOT AUDITED BY THE DOL AND HERE IS EVERYTHING YOU NEED TO KNOW

BY ANONYMOUS

Q. How did you first become aware that you were going to be audited by the DOL? How did they contact you?

A. I was first contacted via a letter dated March 13, 2017, stating that upon an examination of the books and records of a colleague, payments were made to me for services performed as a subcontractor in years 2013-2017.

Q. What kind of documents and paperwork were you asked for? Were you given a certain timeline to supply them?

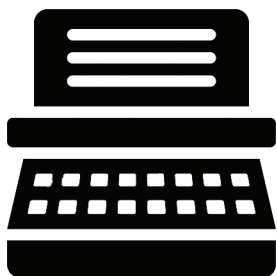
A. The letter of March 13, 2017 requested I forward copies of Federal Income Tax Returns – Form 1040 Schedule C - front and back, and all 1099s received for services performed.

In addition, I had to provide copies of business cards, invoices, letterhead, telephone book and newspaper/trade publication advertisements, and business insurance. This was necessary to correctly determine my relationship with "the above named employer." I had to respond no later than March 31, 2017. Mind you, the letter is dated the 13th and postmarked the 20th, so I had a little over a week to get the information together.

I passed the DOL test because I handed in all of the necessary paperwork they requested. The reason why I'm in a jam now is because some of the reporters who received the same letter as I originally received did not comply with submitting paperwork or did not have the paperwork. Some ignored the letter. Because of that, it is somehow up to me to prove they're not employees, as opposed to them proving same.

Q. How has this affected your professionally?

A. I am very careful who covers jobs for me. I wound up not liking freelancing any longer. It became too stressful. When an opportunity arose to work as an official, I leapt at the chance.



Q. How has this affected you personally?

A. The stress level was unreal! I'm still getting quarterly statements from them. My original amount due was approximately \$2,500. With penalties and fees, which still accrue while I'm appealing, I am now up to \$6,200. It's been a nightmare, and I've put it in the back of my mind to keep the stress level down.

On October 3, 2018, I received a voicemail canceling because the auditor had other cases the same day and didn't have time for everyone. I tried to reschedule for sometime in November 2018. In the meantime, I emailed all of the information that I had gathered for our conference to him

On October 4, 2018, I had an informal conference set up at my house to discuss my appeal and to present all the additional paperwork I had to get from subcontractor reporters who took jobs for me.

In January 2019, he emailed me stating that he forwarded all of that info to the auditor and was waiting to hear back. We played phone tag through the end of January. Then on February 1, 2019, I was granted my request to wait until the Jersey Shore decision was finalized before we continued with the Informal Hearing process. To date, I haven't heard anything.

Q. Is there anything freelance court reporters should be doing to protect themselves?

A. As far as protecting yourself - be organized!! Furnish all documents they request. Be confident in how you handle yourself. Having your own clients is very important. They don't like when all of your work comes from other agencies.

In summary, I had no authority over the reporters who did not provide the requested documents – which further goes to the fact that they're not my employees under my direction and control. It's a simple concept; provide what they ask for.

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WHY AGENCIES SHOULD CARE ABOUT THE DOL ISSUE

Q. What is the DOL Audit, and why is the DOL targeting court reporting agencies?

A. As you may know, the NJ Department of Labor and Workforce Development has been auditing court reporting agencies claiming that the court reporters are employees, not independent contractors, despite the fact that court reporters have had a statutory exemption since 2010. In fact, reporters have had some form of exemption going back to a 1985 bill signed into law by then Governor Tom Kean. None of those exemptions has stopped the NJ-DOL from attempting to reclassify reporters as employees and agencies as employers, utilizing their own internal guidelines to pierce the exemption in an attempt to extract unemployment benefit payments from both sides.

Q. As an agency, what would it mean to employ court reporters?

A. The agency/independent contractor relationship has been the norm in the freelance court reporting industry for all time. It benefits the agency, the independent contractor, and, ironically, the state. Since we know of no unemployed licensed Certified Court Reporters in NJ, the state would not have to pay unemployment benefits to a CCR.

An independent contractor can take work from whatever agency they choose, set their own rates, work as often or as little as they want, and take tax deductions for legitimate business expenses, e.g., a home office, travel/equipment expenses, and telephone.

Treating court reporters as employees would require agencies to increase accounting and payroll costs, pay more tax and file more tax forms with the federal government and state or states in which the reporter works, and increase the costs of employer provided health and pension benefits. The result would be less income for both the agency and independent contractor, and more income for the DOL, which would be a pure windfall since we know of no unemployed CCRs to which they have paid benefits.



Q. How much time, money, and effort would it cost to litigate an audit?

A. The amount of money an audit would cost depends on the size of your agency and how willing you are to fight. For instance, Jersey Shore and State Shorthand have expended tens of thousands challenging the DOL audits. CCRA-NJ has incurred legal fees of \$68,000 and with the matter now up on appeal, it is estimated that another \$30,000 to \$35,000 will be required to properly present the matter to the Appellate Division. That is why CCRA-NJ is asking all court reporters and agencies to donate generously to the DOL fund.

However, the time, effort and emotional toll an audit takes on an agency owner cannot be quantified. There is no price that can be put on lost sleep, pulling records from years past, and then dealing with an auditor who ignores your point of view and makes decisions that fly in the face of the statutory exemption that has been in place for decades.

Q. What kind of protocols would best establish an agency/independent contractor relationship?

A. First and foremost, require that all reporters who take work from you have a legal business entity registration with New Jersey, either as a corporation or LLC, along with a federal tax EIN. Require that the reporters submit invoices with each job. Any payments made to reporters should be made in the name of the business, not the individual's name, and the Form 1099-NEC should be filed under the business name and EIN.

The individual reporter should be treated the same as if you were referring work to another agency.

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WHY COURT REPORTERS SHOULD BE CONCERNED

Q. I am a freelance court reporter. The NJ Department of Labor and Workforce Development seems to be targeting agencies in its audits. Why should I care about any of this?

A. Your status as an independent contractor will allow you to make more money than if you were an employee. Agencies are willing to pay more for independent contractors because they don't have to enter into expensive, long-term commitments or pay health benefits, unemployment compensation, Social Security taxes, and Medicare taxes. Independent contractors also may deduct more business expenses than employees typically can claim.

Unlike employees, independent contractors are required to withhold their own federal, state, and local taxes, which means you have access to your money throughout the year. If an employer withholds taxes from your pay, the IRS holds your money until you file your tax return and a determination is made as to whether or not you will receive a refund. You will be required to pay estimated taxes to both the state and the IRS, but the amount of tax you pay during the year will usually be less than the total tax owed.

Q. What should I do if I receive a Worker Classification Questionnaire from the NJ DOL?

A. Fill it out and return it. The DOL is inquiring about an agency that they are auditing and the information you provide will assist in the determination of whether you fall into the independent contractor or employee category. If you do not respond, the DOL will make the determination that you are an employee.

Q. What can I do as a freelancer to protect and preserve my independent contractor status?

A. Establish a legal business, LLC, or corporation. An LLC is easy to form and the cost to do so is minimal. Do not provide your Social Security number to the agencies. Apply for an Employee Identification Number (EIN) from the IRS and note it on your invoices. Create business cards with your legal business name and at least your e-mail address. Prepare an invoice and send it to the agency with every job you do. Have the agency cut the check to the LLC. At the end of the year, the 1099 should be issued to the LLC. Spend the money for an ad in the Yellow Pages. The DOL deems that an acceptable form of advertising to the general public.



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