

To: Hon. Lawrence F. Stengel, Pennsylvania (Eastern); Hon. Robert E. Bacharach, Tenth Circuit; Hon. Timothy Burgess, Alaska; Hon. Amy Berman Jackson, District of Columbia; Hon. Brian A. Jackson, Louisiana (Middle); Hon. John A. Jarvey, Iowa (Southern); Hon. Roslynn R. Mauskopf, New York (Eastern); Hon. Robert L. Miller, Jr., Indiana (Northern); Hon. Kathleen M. O'Malley, Federal Circuit; Hon. Robert E. Payne, Virginia (Eastern); Hon. C. Ashley Royal, Georgia (Middle); Hon. Anita Louise Shodeen, Iowa (Southern); Hon. Deborah M. Smith, Alaska; Hon. Thomas A. Varlan, Tennessee (Eastern); Hon. Douglas P. Woodlock, Massachusetts; Julie Neville, CRAG/AO Liaison; Robert Lowney, Programs, CSO; Mary Louise Mitterhoff, Chief, CSO; Patricia Fitzgibbons, Policy and Strategic Initiatives and Chief, HRO; Jeff S. Sutton, Associate Director, DPS; James R. Baugher, Associate Director, DAS; Lee Ann Bennett, Deputy Director, AO; James C. Duff, Director, AO

From: Court Reporter Advisory Group

Date: June 1, 2017

Re: Work Measurement Study – CRAG Position Clarification

At this time, the Court Reporter Advisory Group (CRAG) would like to clarify/amend its position on which option it recommends as being presented to the Judicial Resource Committee (JRC) on June 7, 2017.

TRANSPARENCY

On March 28th, 2017, a meeting of the Court Reporter Advisory Group (CRAG) and the Work Measurement Steering Group was held by Jeff Sutton for the purpose of discussing the outcome of the 2016 Work Measurement Study (WMS) of Court Reporters and four possible options available to be presented at the JRC in June. At that time, a PowerPoint presentation was given, explaining those four possible options. However, there was no underlying data collected from the WMS provided as the basis for the four options being explained. Despite the guiding principles in the Court Reporter Staffing Formula Development Study Plan and individual requests, the underlying data was not provided prior to the meeting. During the meeting, Mr. Sutton did say that he would provide each CRAG member

with the individual aggregate data for their respective districts upon request, and he did so.

On March 23rd Jeff Sutton sent us a memo with three attachments for the first time revealing the options. Although one was entitled, “Court Reporter Background,” I do not believe this gave the underlying data, but reviewed the background of the study up to that point. On April 13th Jeff Sutton sent us a memo updating the options and attaching an Excel spreadsheet of the 2016 reporter data by district as used by him.

We have never received the underlying documentation (AO40As) to verify the district figures.

On May 22, 2017, a memo was sent on behalf of the United States Court Reporters Association (USCRA) to the AO requesting the following:

1. Individual AO40A forms due October 20th, 2015 to January 20, 2017. This will provide a baseline for comparison of the data before the study began, data during the practice period, and data during the study itself. The CRAG understands that individual-identifying data may not be shared outside of the CRAG.
2. A notation on individual AO40A forms whether the reporter is tour or non-tour.
3. Specific numbers relied upon for work performed by contract reporters.
4. The specific numbers relied upon for the study of Article III judges, certified senior judges, non-certified senior judges, and Article III vacancies in each district.

At this point in time, this data hasn't been provided and the response to the requests has either been no response or being told by someone in the AO “I don't own the data.”

Included below is the response from Bob Lowney received Friday afternoon, May 26, 2017. It should be noted that the Study Plan appears from the title page to be a product of the Judicial Conference; so, whether Mr. Lowney and the AO agree with what it says under the Transparency Principles and regardless of what Carolyn Peake told reporters in the WebExes, it is not their interpretation or intent that controls whether we get the material requested, it is the JC's interpretation.

“I [am] aware of your communication with Jeff Sutton regarding the data you list below and I have talked with Julie Neville to get clarification on what data was discussed and/or promised in the earlier stages of the study with Harvey and Carolyn Peake. I am confident that we never intended to provide the large scale unmasked release of every AO 40A form for every court reporter. This is particularly true because throughout training, Carolyn stressed to the court reporters that their individual numbers for a given quarter were not as important compared to the yearly total for their district, and that individuals should not be embarrassed or concerned about others seeing that they had taken significant time off, etc. Without researching any specific authorities to release individual court reporter AO40A's, I personally would never do so without prior consent from every court reporter. As to specific numbers on contract reporters, as discussed at the last CRAG meeting, we only have cost data for contracts and we utilized that data based on hourly rates to determine an FTE equivalency. The data regarding Article III judges, certified and non-certified seniors, and vacancies has already been provided.”

FLAWS IN THE DATA

During the March 28, 2017, meeting, there was discussion of senior judge certification and the 650-hour requirement. As the 650-hour requirement to certify senior judges is completely arbitrary, and because different circuits use different criteria to certify senior judges, it seems the outcome of the WMS would be flawed, even if there were statistical analysis tools employed to account for these differences.

There was also mention in the meeting of some inconsistent data reporting, the most memorable example of which was that there was a district that reported zero administrative hours.

We have been unable to confirm the accuracy or inaccuracy of any of the aggregate figures upon which the study relied, as we did not have the AO40As to make that determination.

We believe the non-tour and contract reporters were treated in the same manner; i.e., their hours were calculated based upon funds paid and not hours worked. That is our supposition.

It skews the results of the study because the non-tour reporters do not come within the "normal" working hours per year as defined by the OMB. They should be considered as putting 100% of the time required to be in the courthouse, with no deductions for times they hired substitutes and no deduction for "leave" for which they are not permitted to take or claim. We have no information how their time was computed.

The contract reporters' per diem costs were known; so, if they billed for either a half day or full day, they were "granted" either 4 or 8 hours. The actual hours worked were not known, nor was there data collection of the time they spent doing administrative court-related duties or transcript prep time.

These two groups of workers were included in the study but vary drastically when compared to tour reporters. We do not know how their data was treated or how it impacted the numbers upon which the options were formulated.

OPTION 3

During the March 28, 2017, meeting, Option 3 was discussed extensively as the only truly viable option. This option would change the staffing formula from one reporter (Full-Time Equivalent or FTE) to one judge to .89¹ FTE to one judge. There was discussion that the remaining .11 could be made up as necessary by the Clerk's Office funding. It was discussed that the larger courts – which would be much more adversely affected by this formula change – could possibly reach out to the Court Services Office (CSO) and the CSO may be able to help them with additional funds or suggest how the Clerk could better use their funds, though it was explained that it was completely at the CSO's discretion. It later became our understanding that it is not the case that .11 FTE of a reporter's salary is easily made up from the Clerk's funds. Understanding this may vary by district, it most

¹ During the March 28, 2017, meeting, Option 3 posited a formula of .87 FTE per judge. However, post-meeting some late-arriving data caused the numbers to be recalculated, which changed the formula to .89 FTE per judge.

certainly will have a negative impact on those districts that currently have the highest allocation of FTEs and those with divisional offices.

ONE SIZE FITS ALL

Prior to the WMS, there was discussion that not every district will be treated alike. Indeed, in a July 8, 2015, email to CRAG members, et al., Harvey Jones explained that they would “most certainly not treat everyone as a cookie cutter entity.” However, it seems as though this is exactly what has happened. The Option 3 approach will affect each district differently, from the smallest to the largest. Understanding that complex statistical analysis went into developing the different options put forth at the March 28, 2017, meeting, as CRAG members are not statisticians, it is difficult to analyze effectively how these options were arrived at, other than at its basic starting points. The effect, however, is easily discernible.

It seems that because we’re dealing with the labor and service of court reporting and not production of a product on an assembly line, this one-size-fits-all approach is not the most effective way to accomplish efficient use of court reporter resources, achieve a financial savings, and to properly serve the courts. It’s our position that there are better approaches to achieve these goals, such as grouping of like-sized courts or the discontinuance of funding of current reporter allotments and instead funding reporter positions currently filled and funding new positions as judges are appointed.

END OF MARCH 28, 2017, MEETING

At the end of the March 28th meeting, CRAG was asked which option it would endorse/recommend. There was a lunch break where the CRAG reporters conferred and came to a consensus. CRAG’s recommendation was to continue with Option 1, which is the current staffing formula of one reporter per active, onboard Article III Judge and one reporter per certified senior Article III judge; but, to the extent Option 1 would be rejected or not considered, CRAG would recommend Option 3. CRAG also requested a two-year stabilization period as opposed to the one year outlined in Option 3.

CONCLUSION

In light of the lack of transparency, flaws in the data, and what we consider to be approaches to the staffing formula that aren't well-suited to court reporting, CRAG would like to clarify/amend its recommendation and support only Option 1 and continuing forward with the current staffing formula of one reporter per active Article III judge and one reporter per certified senior Article III judge.