

DATE: June 1, 2017

TO: Hon. Lawrence F. Stengel, Hon. Robert E. Bacharach, Hon. Amy Berman Jackson, Hon. Brian A. Jackson, Hon. Robert L. Miller, Jr., Hon. Kathleen M. O'Malley, Hon. Robert E. Payne, Hon. C. Ashley Royal, Hon. Anita Louise Shodeen, Hon. Deborah M. Smith, Hon. Thomas A. Varlan, Hon. Timothy Burgess, Hon. John A. Jarvey, Hon. Roslynn R. Mauskopf, Hon. Douglas P. Woodlock

FROM: United States Court Reporters Association  
Brenda L. Fauber, President

RE: Allocation of Federal Official Court Reporters

As a result of a request by the Judicial Conference Executive Committee for a review of the method used to allocate court reporter resources for active Article III judges and Senior Status Article III judges, a Work Measurement Study (WMS) was performed by the Administrative Office (AO). Data was collected from new, reformatted AO 40A forms, and in addition all clerks of court and court reporters were surveyed.

Following the analysis performed by the AO, four options were presented to the Court Reporter Advisory Group (CRAG), The Steering Committee, and the District Clerks Advisory Group (DCAG). After a review of the information the United States Court Reporters Association (USCRA) has received in this matter, USCRA would like to express to the members of the Judicial Resources Committee our opinion on the options presented by the AO resulting from the WMS and suggest another option.

There were four options presented by the AO, with Option 3 being presented as their preference. Option 3 calls for 89 percent funding of each court reporter position. This allocation would modify the current business model in many courts and reduce the amount of money provided to districts with allocated but unfilled positions.

As the process for this WMS unfolded, CRAG reporter members were designated as the Subject Matter Experts. The AO provided to CRAG the Court Reporter Staffing Formula Development Study Plan. Included in the Study Plan was the following statement regarding transparency: All parties may request any data element collected and explanation of subsequent analysis, though HRO staff will mask the identity of any specific court reporter from all parties except the respective office and the steering group or SMEs.

In March 2017, four staffing formula options were presented. At that time, CRAG members had not received access to the underlying data as provided for in the Study Plan. As recently as May 8, 2017, CRAG member Shirley Hall requested these

documents from Mr. Sutton. Mr. Sutton declined to provide the information, stating he was not the owner of the data, and directed her to Mr. Lowney.

Ms. Hall requested the same documents from Mr. Lowney, and he responded:

“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 AO 40A's, I personally would never do so without prior consent from every court reporter.”

Without the transparency that had been promised, it is impossible for USCRA to thoroughly analyze the data or make a favorable comment on any of the suggested options to the current allocation. There were anomalies that could not effectively be addressed without analysis of the underlying data, as explained below.

While the overall WMS looked at all the time worked by reporters employed in the federal courts, the actual hours worked by contract reporters is unknown. An estimate was used based on per diem costs that vary from court to court. There was no data collected for the actual time contract reporters spent performing court reporter duties, yet the estimated time was used in calculating the proposed staffing formulas.

Over 10 % of federal official reporters are employed in a non-tour status, meaning they must be available only when requested by the court and therefore may work less than a 40-hour week. The analysis employs a standard 1743-hour work year for all court reporters, but non-tour reporters do not have the same work year hours. The inclusion of non-tour reporters alters the formula since the base hours used, the common denominator, are different. Non-tour reporters' time must be either adjusted to conform to the 1743-hour work year or segregated from the formula calculations.

Additional problems noted in the collected data include missing reports, reports showing no administrative hours, and reports showing no transcript preparation hours. USCRA learned of a court in which the reporters were not allowed to include more than 40 hours per week on their AO 40A forms, despite the actual number of hours worked. This may result from confusion on the part of some clerks or supervisors concerning payroll hours versus AO 40A hours.

AO staff selected the total number of onboard Article III and certified senior status judges' authorized court reporter credit under the current method as the work driver for

this study, along with the aggregate number of 650 hours for senior status judges that were not certified. The AO then compared the number of judges in a court to the reporter work hours reported in the AO 40A reports and discovered a very strong correlation between the number of judges and the number of court reporters' work hours. We believe there is a strong correlation but disagree that the correlation is meaningful in determining a formula. Judges handle their caseloads as they see fit, some placing everything on the record while others not. USCRA believes the work driver used in the proposed allocations is improper and will not account for variables in each district.

While the Court Reporter Act, 28 U.S.C. 753, does not provide for court reporter services for magistrate judges, the data collected during this process has demonstrated reporters do provide reporting services to all judges in their courts. Decisions regarding which business model to follow should remain at the district level.

USCRA is cognizant of the *Strategic Plan for the Federal Judiciary* which encourages Senior Article III judges to continue handling cases as long as they are willing and able to do so. We are also aware of the *Report on Senior Judge Staffing Certification* from May 2016 which indicated that no changes need be made in the staffing certification for senior judges, given the disparate caseloads, case management practices, procedures, and culture. However, attention must be paid to the ever-increasing number of senior status judges and the impact this has on court reporter allocation.

By virtue of all the aforementioned concerns, the United States Court Reporters Association is asking that consideration be given to what we are calling a modified Option 1. We understand that the current method of determining court reporter staffing (one-to-one) has resulted in allocating more resources than is required to meet staffing needs. The goal is to reduce over-funding court reporter staffing. We believe this can be accomplished very simply as follows:

Cease funding vacant court reporter positions. Fund only court reporter positions that are filled as of a date certain. When a new judge is appointed and requests a court reporter, an additional allocation would be provided just as it is done for a law clerk or judicial assistant related to the appointment of a new judge. The change can be implemented almost immediately and the cost savings can begin immediately.

In the alternative, consideration should be given to maintaining the current one-to-one allocation for on-board Article III judges and further study be undertaken with respect to the appropriate allocation needed for senior status judges and magistrate judges.