

Court Reporters Achieve Victory in Battle Against the NJDOL: An Analysis of the Jersey Shore Reporting Case and Key Takeaways from the Appellate Division's Decision

February 22, 2024 | by Andrew Berns

For years, worker classification has been a hotly debated topic in New Jersey's legislature and judicial system, particularly concerning the distinction between employees and independent contractors. Among those targeted have been court reporting professionals and their agencies, who collectively have been subject to a perplexing fifteen-year saga initiated by the New Jersey Department of Labor and Workforce Development, Division of Accounts ("NJDOL"), which inexplicably audited various members of this group, requiring them to reclassify from independent contractors to employees, and to pay the State years of unemployment and workers compensation taxes, as well as penalties, for the years those payments were not paid. Independent contractors, by definition, do not pay into those funds, nor are they eligible for these benefits. The aftermath of these audits led to a tumultuous legal maze, ultimately concluding in February 2024 with a favorable decision from the Appellate Division in support of the court reporters. This blog examines the complex path through administrative agencies and judicial review, with five key insights about worker classification.

Why were court reporters audited by NJDOL?

It is unclear why court reporters were singled out by NJDOL, and it's important to know the wide impact of this profession. Court reporters provide legal transcription services to attorneys, courts, and public agencies, and they also write closed-captioning for both broadcast and live shows and facilitate communication for deaf or hard-of-hearing individuals in various live settings such as college classrooms, lectures, speeches, stadiums, theaters, cultural presentations, religious services, civic events, and seminars.

This group of professionals, many of whom belong to the Certified Court Reporters Association of New Jersey (CCRA-NJ), have historically operated as independent contractors, allowing for flexibility and choice in where, when and how they work. CCRA-NJ is a not-for-profit organization of individual members involved in or affiliated with the skillful art of capturing the spoken word via stenographic means.

Legislation Amended in 2010

Of significance in the analysis of this matter is that New Jersey's Unemployment Compensation Law ("UCL") was amended in 2010 with a specific exemption of court reporters from unemployment tax, in turn confirming their classification status as independent contractors.

The NJDOL Audit and a Requirement to Pay the State \$39,000

Nevertheless, the NJDOL did target this group, with the provision of an audit letter to a business known as Jersey Shore Reporting, LLC ("Jersey Shore") in 2011. Jersey Shore is a Monmouth County-based family owned and operated business, that since 2002 has provided services throughout New Jersey. The audit resulted in an August 2013 determination that Jersey Shore owed approximately \$39,000 in unemployment and disability insurance taxes to the State.

This put Jersey Shore's livelihood at stake and required the business to take on the cost and time required to defend itself against the NJDOL and to appeal the audit. Jersey Shore took the position that its court reporters were not employees but rather independent contractors in accordance with legislative classification already on the books in New Jersey.

From the perspective of Jersey Shore, an acceptance of the NJDOL's position and interpretation would change the very nature of the court reporting industry. If court reporters, and the agencies that refer reporting jobs to them, were deemed to be in an employer-employee relationship, the additional costs to expand their pool of employees to include service providers and the inherent increase in costs and taxes would simply stifle competition and give some unaudited companies an advantage in seeking

licensed professionals who would be able to pay more than the competition.

Years and Years of Administrative Agency Hearings, Reviews and a Trial

Understanding the chronology of this matter is crucial, as the audited business, Jersey Shore, endured a prolonged and challenging battle against the NJDOL. This struggle spanned numerous years, involved administrative agencies and judicial courts, and posed a continual threat to Jersey Shore's day-to-day business operations.

Jersey Shore filed a timely appeal of the NJDOL audit result, and the matter was transferred in 2014 to the Office of Administrative Law (OAL) for a hearing as a contested case before Administrative Law Judge Elia A. Pelios.

On January 26, 2015, Jersey Shore filed a motion for summary decision, asserting that it was not liable for these tax payments, which Judge Pelios partially denied due to issues of material fact he felt required a hearing.

In April of 2018, the NJDOL filed a request for interlocutory review from the department's commissioner, and the matter was remanded by the NJDOL Commissioner for a full evidentiary hearing.

On June 19, 2018, CCRA-NJ sought leave to intervene in the matter, known as *Jersey Shore Reporting, LLC v NJ Dept. of Labor and Workforce Development*, OAL Docket No. LID 07013-2014, Agency Docket No. DOL 14-003.

On January 10, 2019, Judge Pelios denied CCRA-NJ's motion to intervene and alternatively granted CCRA-NJ the right to participate in the underlying case. CCRA-NJ's role essentially aligned as *Amicus Curiae* to provide legal analysis and legislative context to the issues in dispute. I was entitled to appear at trial on behalf of CCRA-NJ with permission to write and submit all briefs and related documents but

not to examine or cross-examine witnesses at trial.

Months later, the trial of the matter took place on April 23 and April 24, 2019. The issue in the case was whether N.J.S.A. 43:21-19(i)(10)—from the time of its enactment in 2010—provided an exemption for court reporters under the Unemployment Compensation Law (“UCL”), N.J.S.A. 43:21-1 to -71, or whether court reporters must still establish a Federal Unemployment Tax Act (“FUTA”) exemption pursuant to N.J.S.A. 43:21-19(i)(1)(G) to be considered independent contractors.

Administrative Law Judge Pelios rendered a decision on September 22, 2020, finding that Jersey Shore and the court reporters to which it directed business were not considered to be in an employer-employee relationship and were to be treated and categorized as independent contractors.

On December 31, 2021, the Commissioner of the NJDOL filed his Final Administrative Action overruling the trial decision of Judge Pelios. He concluded that court reporting agencies had to establish a FUTA exemption, and, in the absence of that exemption, court reporting agencies were “employers” subject to the UCL. He determined that all court reporters engaged by Jersey Shore during the audit period were in an employer-employee relationship, and that Jersey Shore was to immediately remit to the Department \$39,236.06 in unpaid unemployment and temporary disability contributions, along with applicable interest and penalties. The Commissioner also stated that at this point in the matter, any subsequent review would need to be done in a judicial forum.

The Matter is Moved to the Appellate Division of the Superior Court

Jersey Shore filed its appeal with the New Jersey Superior Court, Appellate Division in February 2022. A request by Jersey Shore to the Commissioner for a stay on his determination of penalties was denied on March 8, 2022. The Appellate Division consolidated Jersey Shore’s appeal with an appeal from another company State Shorthand Reporting Services Inc., both against the New Jersey Department of Labor and Workforce Development, case numbers A-1500-21 A-1710-21. A briefing schedule was established, and all parties submitted appellate briefs.

Oral arguments took place on January 16, 2024, with the decision issued on February 12, 2024, two years after the filing of the appeal. The Appellate Division's decision in favor of the court reporters can be read [here](#).

The court reporters (both as individual parties and as *Amicus Curiae*) successfully argued on appeal that the plain statutory language, as well as the legislative history of the UCL, particularly with respect to the FUTA exemption, compelled a conclusion that court reporting agencies were exempt from the UCL.

The Appellate Division of the Superior Court of New Jersey unequivocally established and affirmed the position espoused by the CCRA-NJ for many years that N.J.S. A. 43:21-19 (i) (10) provides an exception for court reporters who are to be treated and categorized from the effective date of the statute, January 16, 2010 forward as independent contractors. As such, the Appellate Division dispensed with any requirement that 43:21-19 (i) (10) requires a FUTA exemption to categorize court reporters as independent contractors.

As a result of the win, for all time periods subsequent to January 2010, court reporters continue to be recognized as independent contractors, free to work when/where/how they choose.

Six Takeaways from the Appellate Division's Decision

1. For any court reporter or agency providing work opportunities for court reporters, any audits existing and temporarily stayed while these cases wound themselves through the court system should now be dismissed and all fines and penalties from prior decisions should be abated.
2. The decision ensures that attorneys will continue to have a wide array of reporting agencies and certified court reporters from which to choose.
3. The decision should also stop NJDOL auditors from what appeared to be a pattern of harassment of court reporters and brokering agencies via constant letters and inappropriate requests for information from various entities who were customers.
4. The scrutiny of the court reporters and the agencies should now be eliminated, allowing the court reporters and the brokers to concentrate on their small businesses instead of the constant need to devote time and cost in defending themselves against the state of New Jersey.
5. The decision allows the business model for this industry to continue in the way it has operated for many years, allowing court reporters to work as much as they choose and

permitting them to accept jobs from one agency or multiple agencies without concern as to how these business opportunities will be construed.

6. Finally, this decision creates a business environment where consistent pricing to customers who use reporting services will be maintained as all reporters and agencies will be treated the same relative to being exempted from unemployment and other taxes.

For questions about worker classification, or other employment law matters, please contact [Andrew S. Berns](#) at 973-586-4940.