

# NJDOL Will Not Appeal Appellate Division Decision Allowing Court Reporters to Be Categorized as Independent Contractors

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March 7, 2024 | by Andrew Berns

The New Jersey Department of Labor and Workforce Development, Division of Accounts (NJDOL) will not pursue an appeal of a decision allowing court reporters to be recognized as independent contractors, definitively concluding a circuitous legal battle that has lasted more than a decade.

In early March, the window closed to seek leave to appeal the Superior Court of New Jersey, Appellate Division's decision in Jersey Shore Reporting LLC and State Shorthand Reporting Services v. New Jersey Department of Labor and Workforce Development. NJDOL Audit and Field Services Assistant Director Christopher Pfeffer confirmed that the agency would not appeal, leaving the Appellate Division decision intact.

## The End of a Long and Winding Road

Court reporters provide transcription services for legal proceedings, as well as other live settings, such as classrooms, speeches, religious services, and more. 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.

Independent contractors trade this flexibility for an ineligibility to receive unemployment and workers compensation benefits, so they do not pay these payroll taxes. A 2010 amendment to the New Jersey Unemployment Compensation Law (UCL) specifically exempted court reporters from unemployment taxes, confirming their classification status as independent contractors.

Nonetheless, in 2011, NJDOL sent an audit letter to Jersey Shore Reporting, LLC that determined the business owed approximately \$39,000 in unemployment and disability insurance taxes and penalties to the state.

This demand led to a tumultuous legal maze that started with an appeal of the NJDOL audit results to the Office of Administrative Law and then the NJDOL Commissioner. The CCRA-NJ was permitted to participate as a de facto Amicus Curiae at the administrative law trial, where it was represented by Einhorn Barbarito Employment Practice Chair, Andrew Berns.

In September 2020, Administrative Law Judge Pelios found Jersey Shore and the court reporters to which it directed business were not found to be in employer-employee relationships. In late 2021, the NJDOL commissioner filed a final administrative action overruling the trial decision, concluding 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.

Jersey Shore appealed to the Appellate Division in February 2022. Two years later the court unequivocally established and affirmed the position espoused by the CCRA-NJ for many years that the statute in question — N.J.S. A. 43:21-19 (i) (10) — provides an exception for court reporters who are to be treated and categorized as independent contractors from the effective date of the statute, January 16, 2010 and forward. As such, the Appellate Division specifically dispensed with any requirement that 43:21-19 (i) (10) requires a FUTA exemption to categorize court reporters as independent contractors.

## Carry On, Court Reporters

The case could have changed the very nature of the court reporting industry by increasing costs for agencies, and thus their clients. The Appellate Division’s decision ensures that attorneys will continue to have a wide array of options for choosing reporting agencies and certified court reporters. Court reporting agencies will no longer be subject to harassing letters from NJDOL auditors. Finally, stenographic professionals will continue to enjoy flexibility in choosing where and when they work

without threats of audits or fines from the state.

For questions about employment law, please contact [Andrew S. Berns](#) at [aberns@einhornlawyers.com](mailto:aberns@einhornlawyers.com) or 973-586-4940.