



25 January 2010

Steven C. Hollon, President  
Conference of State Court Administrators  
c/o Supreme Court of Ohio  
65 South Front Street  
Columbus, OH 43215-3431

Dear Mr. Hollon:

The National Court Reporters Association has had the opportunity to review the recent white paper issued by COSCA entitled "Digital Recording: Changing Times for Making the Record." It was curious to NCRA that the committee COSCA charged to construct its paper neglected to include our organization or indeed any court reporters in the process it used to come to its conclusions. As professionals who are quite literally involved on a daily basis with creating the court record, we do not see the logic in neglecting to consider the perspectives of such a relevant group in at least the intelligence-gathering process for such a paper. Over the past several months, NCRA has continually requested an opportunity to provide input into the task force's research and was refused at every step. We do not claim to have a monopoly on all wisdom related to making the court record, but it simply is inconceivable that COSCA would consider our experiences, data, research, and perspectives to be entirely irrelevant in an intellectually honest discussion of a subject on which court reporters indisputably are subject matter experts.

Equally troubling is that COSCA did not appear to involve other groups representing judges, jurists, attorneys, parties, or the public in their process, groups whose perspectives and knowledge as the primary users of the court record must be part of any serious discussion on this topic. Moreover, the closed process employed in developing this white paper is entirely inconsistent with the principles espoused in COSCA's own "White Paper on Promoting a Culture of Accountability and Transparency," adopted by your organization just a year ago.

Such an opaque, insular, and exclusive process predictably led to seriously flawed conclusions. Even more serious than the shortcomings of the conclusions of the paper itself is the complete absence of empirical data or any sort of corroborating evidence to support those conclusions. Statements of opinion are given an illusion of factual basis through liberal use of citations to studies commissioned by other organizations—including by NCRA and the National Court Reporters Foundation—where the specific findings of those studies do nothing to support the paper's stated theses.

The paper and its conclusions grossly oversimplify or entirely ignore the practical limitations of the "audio only" record that it recommends serve as the de facto official record of all proceedings. The costs (in real dollars as well as time) incurred by the parties and superior courts, if there is cause for another court or panel to review a lower court's actions, are ignored. Issues of ensuring the privacy and security of confidential information within audio records are entirely unaddressed.



NCRA recognizes that audio and video recording have made their way into the judicial process. In fact, it was the National Court Reporters Foundation that funded a study by the Judicial Management Institute that you cite in your paper, which provides courts with assessment tools for evaluating its record-making needs in an objective and practical manner. We recognize that in the current economic environment court administrators face strong pressures to reduce their budgets and it is not their intention to reduce the quality and integrity of the record in that effort. We likewise acknowledge that there are competing demands on all members of the judicial system and numerous conflicting perspectives over the best solutions. We are prepared to present and defend our own perspectives in a constructive and open fashion. It is the entirely one-sided nature of the COSCA white paper to which we object and that does an injustice to those courts honestly struggling with these serious matters.

It is our position that court administrators would be wise to disregard the conclusions of the COSCA paper, not because it treats the profession of stenographic reporting in an unfair and negative light—though it most assuredly does—but because the conclusions misrepresent the realities that court administrators, parties, jurists, and the Bar face in seeking an effective administration of justice.

We recognize that we are taking a strong stance in our response, but we feel this situation rises to a level of importance that we must leave no ambiguity in our position. We likewise recognize that court administrators possess a unique perspective that is highly relevant to any discussion of how the court record is created and maintained. It therefore was particularly alarming that an organization that represents court administrators would fail not only to include stenographic court reporters in its discussions, but also other groups from the legal arena – such as judges, attorneys, parties, and the public – whose collective knowledge, experience, and expertise should have been foundational elements of conclusions drawn or recommendations made regarding the future of the court record.

Should COSCA be willing to reengage in a true and fair analysis of the needs of courts with regard to making the record, we are prepared to be fully supportive of, and an active participant in, that process.

Sincerely,

A handwritten signature in black ink, reading 'SueLynn Morgan', is positioned below the word 'Sincerely,'.

SueLynn Morgan, RPR, President  
NCRA

Cc: Mary McQueen, President, National Center for State Courts  
Suzanne Stinson, President, National Association for Court Management