OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 05-02 April 11, 2005

TO: All Division Heads, Regional Directors, Officers-in-Charge, and Resident Officers

FROM: Arthur F. Rosenfeld, General Counsel

SUBJECT: General Counsel Responses to Questions Propounded by the Practice and Procedure Committee (P&P Committee) of the Labor and Employment Relations Section of the American Bar Association

The Board and I attended the Annual Midwinter meeting of the P&P Committee from March 1 through 4, 2005. As you know from past memoranda concerning these meetings and from your local meetings with local P&P groups, the purpose of this meeting is to discuss and respond to Committee concerns and questions about Agency casehandling practices. Thus, at this meeting I provided responses to questions that the Committee had submitted to me earlier in the year. Because I believe that it is important that you and your staffs be aware of these responses, I am, as I have in prior years, sharing my responses with you.

As was the case in past years, I was greatly encouraged by the absence of any complaints that the Regions do not generally enforce the Act evenhandedly or correctly. The scarcity of such complaints about case processing clearly indicates that Agency employees are doing an excellent job enforcing the law in highly charged circumstances. The Summary of Operations for Fiscal Year 2004 reported that casehandling in the Field continues at a very high level of efficiency. My meeting with the P&P Committee, as well as our Quality Review program, evidences that we did it evenhandedly as well. I commend all of you and offer my thanks for these fine efforts.

The attached summarizes our responses to the committee.

/s/
A. F. R.

Attachment

cc: NLRBU
Release to the Public

Responses to Questions from the ABA Practice & Procedure Committee

Midwinter Meeting 2004

What flexibility does a Regional Director have to set a hearing date? If the Regions vary from these objectives, how should practitioners resolve these variances?

Response: In managing the processing of representation petitions the Regions seek to conduct a hearing between 10-14 days after the filing of the petition, unless the parties enter into an election agreement. However, there are occasions when the goal cannot be achieved. Regional practices in achieving these goals vary. Some Regional Offices schedule hearings at the same time that copies of the petition are served on the parties. Under this practice, a notice of hearing is sent to the parties at the same time they receive copies of the petition. The hearing is scheduled between 10-14 days after the filing of the petition. Other offices have a practice of advising the parties by letter when serving the petition that a hearing will be conducted on a specific date in the 10-14 day period if no election agreement is reached. Under this practice, a notice of hearing issues shortly after the petition is served. In every case, efforts are made to resolve the matter by agreement.

Regional Directors do have discretion to schedule or reschedule a pre-election hearing outside of the 10-14 day period in light of the particular circumstances of the case or at the request of a party or party representative. However, in responding to requests to put off hearing dates, Directors are ever mindful of the Agency's election goals and the impact that hearing delays will have on Agency performance under those goals.

Has there been any change in the direction to the Regions concerning presentation and explanation of consent elections versus stipulated election agreements? If so, what is the current practice? What is the status of the Proposed Rule Governing Consent Election Agreements?

Response: There has been no change in guidance given to the Regions with respect to presenting the "traditional" consent agreement option to the parties in a representation case. Although the "traditional" consent procedure has not been utilized often in recent years, agents in some Regions regularly advise parties of its availability and advantages. It may be that the Board's consideration of the "full" consent rule proposal has prompted managers and agents in other offices to suggest the availability of the existing consent procedure in their representation case proceedings.

On January 25, 2005, the Board published in the Federal Register the final revision to Section 102.62, adding a "full" consent election procedure effective on March 1 in new subsection (c). As discussed with the Committee last year, this is a completely voluntary procedure, under which the parties can agree to have all disputed election

issues, both pre- and post-election, decided with finality by the Regional Director. Under this procedure, the parties will have the benefit of a prompt Board agent-conducted secret ballot election resulting in the issuance of a Board certification and all contested issues will be decided promptly by neutral expert in the NLRA.

The decision of the Regional Director is, as the Board Rule states "as if issued by the Board". Thus, while there can be no appeal to the Board from the Director's decision, the right to court review, in the same manner as court review could otherwise be sought, is available.

OM 04-76, July 29, 2004 describes procedures to be followed in cases involving card check and neutrality agreements, with certain cases submitted to Advice, while other cases require a consultation with the executive secretary. What has been the Agency's experience since issuing this memo?

Response: OM 04-76 directed the Region to make inquiry of the Executive Secretary's office on issues covered by the memo. The ES office reports a handful of inquiries from the Regions prompted by OM 04-76. Additionally, approximately eleven cases have been submitted to the Division of Advice.

These cases fall into four general categories:

1. How to treat evidence of disaffection or revocation of majority support expressed before, or close in time to, recognition. For example, Advice authorized complaint where the evidence demonstrated that a determinative number of employees revoked their authorizations between the time when the Union requested recognition based on majority cards, and the employer granted recognition.
2. The effect of dealings between the employer and union on a subsequent majority showing. Included here would be the *Majestic Weaving*-type cases in which Advice has authorized complaint, including one in which, irrespective of an after-acquired clause issue, the evidence established that the employer and union bargained about the terms and conditions of employment of employees before the union had demonstrated majority support.
3. The validity of agreements between a union and an employer regarding the employer's dealings with other employers. In this category would be an Advice case in which the union and employer agreed that if the employer gained a controlling interest in another enterprise the union could require the acquired business to adopt its agreement with the employer, including a neutrality clause. Advice concluded this agreement was 8(e).
4. Picketing for a neutrality agreement and Section 8(b)(7). For example, Advice authorized a Section 8(b)(7)(C) complaint on evidence that a union engaged in picketing for over 30 days without filing a timely election petition with an object of securing a neutrality agreement.

Are there Agency guidelines concerning information provided to and requested of respondents following the filing of a charge? Some practitioners report receiving letters from the Region in which they practice, with specific questions and certain information. Other practitioners report that the information is limited to the face of the charge, thus making a meaningful response more difficult.

Response: The information disclosed to a charged party may vary depending on the stage of the investigation. Pursuant to Casehandling Manual Part I, Section 10052.5, "Initial Contact with Charged Parties," the Board agent should contact the charged party early in the investigation before the investigation of the charging party's evidence is complete. This approach assists the agent in evaluating the charging party's evidence. As the Board agent does not possess all of the charging party's evidence, the section provides that "Board agent should broadly describe the allegations of the charge and solicit the charged party's initial position."

Later in the investigation, the Board agent may provide more detailed information to the charged party. Section 10054.4, "Subsequent Charged Party Contact and Interview," describes contact with the charged party after the Board agent has determined that the initial evidence suggests a prima facie case. This section provides as follows:

> When communicating with the appropriate charged party representative to obtain evidence, Board agents should relate the basic contentions that have been advanced with regard to all violations alleged. For example, when the charging party's evidence points to a prima facie 8(a)(1) violation involving threats of discharge, the Board agent normally would disclose such information as the general nature of the conduct (e.g., threat of discharge), the general locale, the identity of the supervisor involved, and the date of the conduct. Although such disclosure may be a decisive factor resulting in the charged party's full cooperation, the degree of disclosure should be commensurate with the level of cooperation anticipated from the charged party. Since the identity of a witness should be protected, the Board agent should, whenever possible, avoid providing details that would likely disclose the identity of the witness.
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> Particularly when the case includes pivotal questions of law, the Board agent should candidly disclose the legal theories under consideration and invite the charged party to file a statement of position or memorandum of law regarding such matters, provided it is submitted consistent with the time goals for the case.

This committee has previously raised concerns about Board agents providing very short time lines for responding to charges or submitting witnesses for affidavits. Many examples were reported in our regional meetings. What has the Agency done to address this issue?

Response: The Agency seeks to afford parties a reasonable period in which to provide evidence in support of their positions. The goals for the completion of investigations

contemplate providing adequate time to charging parties to present evidence supporting their charges and adequate time to charged parties to respond to charge allegations. We expect that parties and Board agents occasionally will have differences of opinion with respect to what constitutes an "adequate" amount of time. Our experience is that these differences usually can be resolved in a mutually satisfactory manner. If a party or representative is unable to resolve a problem concerning a deadline for presentation of evidence with the Board agent, she should contact the Regional Director. If that exchange is not satisfactory, the party or representative can contact the Division of Operations. Operations has considered and addressed occasional inquiries or complaints of this nature in the past.

We told the Committee that giving a charged party notice that it has only two or three days to submit evidence is acceptable only in a statutory priority case.

We understand that with reduced staffing/tighter budgets there may be a return to telephone affidavits/interviews in certain circumstances. Phone interviews have on occasion produced inaccurate statements and unnecessary duplications of effort which would not have been required had there been interviews in person. Are there any guidelines concerning the circumstances in which telephone affidavits/interviews are appropriate? Is the Agency receptive to draft affidavits prepared by parties?

Response: Face-to-face affidavits remain the keystone of NLRB investigations. In order to use our limited resources most effectively, however, the Agency continues to take telephone affidavits in certain circumstances. Memorandum GC 02-02, "Impact Analysis Program Modifications," (December 6, 2001), sets forth general guidelines for using telephone affidavits and other alternative investigation techniques. Pursuant to Memorandum GC 02-02, Regional Offices should utilize alternative techniques for all Category I cases and for certain Category II cases, such as Section 8(a)(5) or 8(b)(3) request for information or Section 8(b)(1)(A) duty of fair representation cases. Additionally, Regional Directors continue to have the discretion to use these techniques for other Category III and II cases where appropriate. This includes cases involving significant travel expense and in which the affidavit is a supplemental statement, where individuals are providing evidence that corroborates evidence presented in a face-to-face affidavit or where there is a very high probability that the case has no merit.

An affidavit taken by a Board agent continues to be the preferred method for taking testimonial evidence from witnesses. Regional Directors will consider alternatives to this practice, such as affidavits prepared by parties, on a case-by-case basis, after examining factors such as the party's representation of the information to be supplied and the relevance and reliability of the information. While Regional Directors may accept affidavits prepared by the parties in support of their respective positions, the statements will not automatically be accorded the same weight as an affidavit taken by a Board agent. Casehandling Manual, Part I, Section 10060.1, "Non-Board Affidavits or Statements," instructs the Regions to re-interview witnesses on all pertinent parts of affidavits taken by non-Board personnel.

Do guidelines exist concerning the impact of subsequent charges on pending complaints? Some practitioners have indicated that even when a subsequent charge was not related to the pending complaint, this caused significant delays in the litigation of the initial case.

Response: Memorandum OM 95-34 provides guidance to Regional Offices regarding litigation of multiple charges against the same respondent. The memorandum notes that, as a general rule, the Board will, wherever practicable, bar separate litigation of unfair labor practice allegations that are factually intertwined with matters in a prior proceeding and that should have been discovered during the General Counsel's investigation of the prior charge. See *Jefferson Chemical Co., Inc*., 200 NLRB 992 (1972); *Peyton Packing Co., Inc.,* 129 NLRB 1358 (1961). On the other hand, the Board has not interpreted this rule to bar separate litigation of allegations simply because they are based upon facts that the General Counsel knew or should have known when litigating an earlier case. Moreover, the Board has recognized that there should not be a procedural bar when, shortly prior to a scheduled hearing, the General Counsel discovers additional unfair labor practices or new charges are filed. See *Marymont Corp. World Parts Division*, 249 NLRB 216 (1980); *Best Lock Corp*., 305 NLRB 648 (1991).

The memorandum provides the following guidance:

> In view of these cases, generally, the Regions should not postpone the commencement of a scheduled hearing due to either newly filed charges or newly discovered evidence of possible unfair labor practices. Similarly, the Region, generally, should not move for a continuance in the hearing due to the pendency of the Region's investigation of new charges. However, Counsel for the General Counsel should advise the administrative law judge on the record that there is another charge pending investigation and that a motion to amend may be forthcoming if the charge is meritorious and there is time to do so before the record closes in due course.

The memorandum further notes, however, that:

> There may be situations where it would best effectuate the policies of the Act to consolidate the cases notwithstanding the necessity to postpone the hearing. For example, the new violations may provide additional evidence regarding the unfair labor practice allegations or requested remedy in the initial case. In the typical case, however, it is expected that the Region would not postpone the initial hearing.

In applying this guidance, the Director has discretion as to whether she/he believes that the new violations, if meritorious, should be consolidated with the initial

case. Finally, the Regional Director must, as always, be guided by the need for prudent stewardship of Agency resources.

What standards apply to the resetting of unfair labor practice hearings outside of the 21-day period prior to the hearing, and to what extent are the parties consulted with respect to the hearing date?

Response: Section 102.16 of the Board's Rules and Regulations governs rescheduling of hearing dates and places. Section 102.16 provides in relevant part:

> Sec. 102.16 *Hearing; change of date or place*. – (a) Upon his own motion or upon proper cause shown by any other party, the Regional Director issuing the complaint may extend the date of such hearing or may change the place at which it is to be held, except that the authority of the Regional Director to extend the date of a hearing shall be limited to the following circumstances:
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> 1. Where all parties agree or no party objects to an extension of the date of hearing;
> 2. Where a new charge or charges have been filed which, if meritorious, might be appropriate for consolidation with the pending complaint;
> 3. Where negotiations which could lead to settlement of all or a portion of the complaint are in progress;
> 4. Where issues related to the complaint are pending before the General Counsel's Division of Advice or Office of Appeals; or
> 5. Where more than 21 days remain before the scheduled date of the hearing.

In all other circumstances motions to reschedule must be filed with the Division of Judges.

There are a variety of reasons that a Regional Director may have to reschedule a hearing date. For example, a Director may reschedule the hearing in a Category 2 or 1 case in order to schedule a higher priority Category 3 case into that trial slot. Although we have no instructions out on the issue, we believe that it is the general practice for the Region to consult with the parties as to the rescheduled hearing date to avoid conflicts and reduce the likelihood of another postponement request. In managing the Region's trial docket, the Director is guided by the Agency's GPRA goal to open hearings within 120 median days from the issuance of the complaint. Directors are rated on their performance under that goal. In FY 2004, our national experience was that hearings opened in a median of 102 days from complaint issuance.

Several instances were reported that while the parties were actively discussing settlement, with the involvement of the Region, a complaint issued without first providing notice to the parties that it would issue. Is there a policy or procedure that would address this situation?

Response: Following a determination on the merits of a case, the Region, at a minimum, contacts the charged party in an attempt to reach an amicable resolution prior to issuance of complaint. Casehandling Manual (CHM) Section 10126.2 states:

> The Regional Office should carefully assess the impact that issuance of complaint will have on the likelihood of achieving a settlement. Thus, the Regional Director may choose to delay issuance for a short period, if such would be helpful. However, issuance of complaint should not be unreasonably delayed. Where it is clear that settlement at this stage will not be achieved, complaint should issue immediately.

Moreover, CHM Section 10260 provides that "[g]enerally, the likelihood of settlement, the nature of the allegations and other circumstances will determine the timing of complaint issuance."

It is the policy of the General Counsel that the parties be notified that complaint will issue. Thus, if the Director decides that complaint should issue notwithstanding that the parties are discussing settlement, the parties should be so notified. We are aware of one instance where this did not occur due to miscommunication in the Regional Office. Measures have been taken by the Director in that office to ensure that this does not reoccur.

In the experience of practitioners, counsel representing the Regional Director is often not present at hearings involving election objections or challenged ballots. In such instances, what is the procedure for assuring that affidavits are properly redacted before being produced to parties in such hearings?

Response: The Casehandling Manual, Section 11424, provides that the Regional Director "may" assign a Board agent to serve as his or her representative to appear at the post election hearing to see that evidence adduced during the Region's investigation becomes part of the record. The Manual goes on to note that, "as the parties are expected to carry the burden of ensuring that a full record is made . . ., a representative of the Regional Director will ordinarily not be necessary."

As set forth in the Hearing Officer's Guide IX, C, 5, Board policy provides that in post election proceedings, witness' affidavits contained in any pending or closed R or C case files that are in the possession of the Region should be reviewed and appropriately redacted <u>before</u> the hearing by Regional Office personnel, other than the designated hearing officer. As set forth in the Casehandling Manual Section 11426.1(b), prepared copies of relevant portions of the affidavits are provided to the hearing officer, before the hearing, in sealed labeled envelopes, to enable the hearing officer to provide copies as appropriate. In addition, the Hearing Officer's Guide IX, C, 5, provides that at hearing, if a party contends that portions of an affidavit, the contents of which it is aware, do not relate to the subject matter of the witness' post election testimony on direct examination, the hearing officer may exercise his/her discretion to inspect the affidavit in-camera and redact any portion of the affidavit that does not relate to the testimony.

Are cases deferred under *Collyer* monitored? What is the Agency doing to address whatever backlog exists?

Response: Casehandling instructions require the periodic review of cases deferred under *Collyer* and contact with the parties. Out of concerns that some cases were remaining in deferred status an inordinate length of time and that the number of deferred cases was too great, in 2002, the Agency began a series of initiatives to significantly reduced the number of cases pending *Collyer* deferral. In 2002, the Regional Offices collectively resolved 592 cases pending *Collyer* deferral for more than 5 years. In 2003, the Agency resolved an additional 1178 cases pending for 3 or more years, and in 2004, 717 cases pending 2 or more years were closed. Regions are currently surveying both *Collyer* and *Dubo* cases that have been pending for more than 2 years. We expect to survey deferred cases regularly in the future to avoid these cases stagnating on our dockets. Also, we are considering expanding the survey to include cases deferred *1 year or longer*.

In addition to these specific initiatives, Regions are carefully monitoring all deferred cases. Letters requesting information regarding the status of the grievance/arbitration proceedings are issued to the parties 90 days after deferral and on a quarterly basis thereafter. The results of the specific initiatives as well as the routine inquiries are impressive. At the end of FY 2003, there were 4228 cases pending *Collyer* deferral in total; at the end of FY 2004 this number was reduced to 3356.

What is the practice or policy for the Regions regarding the involvement of charging party unions in settlement discussions with discriminatees? There was concern expressed that charging parties are not notified of or involved in settlement discussions until after advance discussions have been undertaken between the Region and the respondent, and sometimes after such discussions have been completed. Are there guidelines and/or training for Board agents in settlement protocol?

Response: Pursuant to Section 10128.5 of the Casehandling Manual, initial discussions regarding an informal or formal settlement are generally between the Regional Office representatives and the charged party. It must be stressed that when negotiating a settlement agreement, the Region must be assured that the charged party will affirmatively remedy the meritorious allegations, and the Agency's interest in obtaining these remedies takes precedence. However, consistent with Section 10128.7, the charging party should be apprised of the settlement efforts.

Where a labor organization is the charging party and there are individual discriminatees involved, we will involve the charging party union in settlement discussions at the appropriate time. Where individual charging parties or individual discriminatees are represented by counsel, direct contact with them would not be appropriate without counsel's agreement. The charging party union's views together with an individual discriminatee's desires will be pertinent to the Director in deciding

whether to accept settlement terms proposed by the charged party/respondent. The timing of the communications with the charging party union generally is left to the discretion of the Region. Of course, the Regional Director will not approve a settlement without providing the charging party an opportunity to join or object to the terms of that agreement. Board agents are trained in the proper procedures to communicate with parties regarding settlement.

Are there guidelines concerning provisions of settlement agreements and releases, such as confidentiality, no-assistance, attorneys fees and non-disparagement clauses?

Response: The types of provisions referred to in this question would not appear in Board settlement agreements. On occasion such provisions do appear in private agreements presented to the Regional Director as the basis of a non-Board settlement supporting a withdrawal request. When these private settlement agreements become known to the Board agent, Regions are directed to review the agreement carefully to ensure that an acceptable remedy for the NLRA violation is provided and that other provisions are not repugnant to the purposes and policies of the Act. It is within the Regional Director's discretion to reject a withdrawal request based upon a private settlement that contains inappropriate or repugnant provisions.

Some Regions require language in settlement agreements that provide that breach of the agreement will result in the filing of motions for summary judgment with the Board, with the Board issuing show cause orders. Does the GC have a policy with respect to the use of such language in settlement agreements?

Response: In *SAE Young Westmont-Chicago, LLC,* 333 NLRB No. 59, (2001) the Board granted the General Counsel's Motion for Summary Judgment when the Respondent failed to comply with a Settlement Agreement which contained default language. The General Counsel has given guidance to the Regions concerning use of default language in settlement agreements if the Region concludes there was a likelihood that the Charged Party would be unwilling or unable to fulfill its settlement obligations (Revision of Settlement Agreement, Standard Form 4775, Memorandum OM 02-44, March 11, 2002). The prefatory language to the optional default provision provides:

> [NOTE: This Optional Paragraph may be used in circumstances were the Region concludes that there is a substantial likelihood that the Charged Party will be unwilling or unable to fulfill its settlement obligations. This language may also be included where the settlement involves large sums of money or installment payments. The Board approved the use of similar language in *SAE Young Westmont-Chicago, LLC*, 333 NLRB No. 59 (2001); No. 01-2328 (7th Cir. Oct. 1, 2001). See also *Ernest Lee Tile Contractors, Inc.*, 330 NLRB No. 61 (2000).]

Rather than a hard and fast rule concerning the use of default language, the General Counsel leaves it to the Regional Director's discretion as to whether a settlement agreement should contain default language.

What has been the Agency's experience and what is the current policy with respect to the use of investigative subpoenas? Under what circumstances should they be issued? Where an investigative subpoena has issued and the Region then issues a complaint, is the settlement rate for those cases higher or lower than the cases where no investigative subpoena was issued? What are the statistics with regard to subpoena enforcement proceedings?

Response: The policy of the Office of the General Counsel is set out in GC 00-02. Since the issuance of GC 00-02, the consistent practice has been to issue investigative subpoenas only when evidence required to decide the merits of an allegation was not otherwise reasonably available. In our view the Regions' use of the subpoena power conferred by Section 11 of the Act, under the authority delegated by GC 00-02, has been prudent and appropriate.

The Agency does not maintain statistics that would show whether there is a difference in the settlement rate for complaint cases where an investigative subpoena has issued compared to cases where an investigative subpoena has not been utilized. Similarly, the Agency does not maintain statistics regarding the outcome of subpoena enforcement proceedings although all available information suggests that we have a high rate of success in such proceedings.

Our reports reflect a modest increase in the number of cases in which investigative subpoenas were issued by the Regions. In FY 2004 investigative subpoenas were issued by RDs in 385 cases. This compares with 326 in FY 2003 and 279 in FY 2002.4 Over the past three fiscal years there has been no increase in the number of petitions to revoke filed with the Board. Thus, there were 33 petitions filed in FY '02, 27 in FY '03 and 26 in FY '04. During those years six petitions were granted in whole or in part; the remainder were denied or were withdrawn, settled or mooted.

In one section 8(a)(3) case involving an alleged discriminatory discharge, a region issued a subpoena after the employer offered to make witnesses available, but declined to have them give affidavits. In another case, the charged party opted not to challenge the subpoena; the witness appeared, and was deposed before a court reporter rather than interviewed for the purpose of giving an affidavit. Under what circumstances should a deposition be taken instead of the traditional affidavit?

Response: An investigative subpoena is appropriately utilized during an investigation when evidence required to decide whether further proceedings on the charge is not otherwise available. The question whether to utilize a deposition rather than an affidavit turns on the Region's assessment of which method will allow it to best obtain the information necessary for an informed determination of the issues presented. If a

Region determines that a deposition would materially enhance its ability to obtain the evidence necessary for an informed resolution of issues before it, it would be appropriate for the Region to decide to question a witness utilizing that method. For example, a deposition may be appropriate where we expect based upon our experience that the witness will be hostile or evasive in responding to questions, where an uncooperative witness can be expected to refuse to review or sign his or her affidavit.

Depositions are not the norm. Their use is expensive and they often delay the interview and the conclusion of the investigation. Occasionally, however, depositions are the preferred manner to record a witness' testimonial evidence.

Practitioners continue to complain about the substandard quality of transcripts and that despite such complaints some Regions continue to use the same contractors year after year. What is the procedure for practitioners to provide feedback to Washington on the continuing problems in the field since apparently the Agency is making an effort, after a letter of warning and the subsequent issuance of a notice to show cause to the contractor, to address the current contractor's poor performance. How does the bidding procedure for transcriptions services work and is it possible for those who practice before the Agency to have meaningful input into the selection process?

Response: The Agency is continuing its efforts to improve the quality of court reporting within the constraints of the Agency's limited resources. Accuracy and timeliness continue to be factors in the bidding process. Contracts are based upon "best value", rather than based solely upon the lowest bid price. "Best value" takes into account such factors as reliability, technical expertise, financial stability and past performance. As in the past, the Agency is considering awarding contracts "conditionally" and Regions will be advised that continuation of the contracts during the initial year is contingent on the contractors' compliance with the contract terms. We have again advised Regional Offices of the importance of monitoring transcript quality and timeliness to ensure that the contractors' performance meets the standards of the reporting contracts.

Practitioners who discover errors or other problems with the quality of the transcripts they receive from contractors should immediately report those problems, in writing to the Regional Office. If these errors are made known to the contractor in a timely fashion, the contractor will be afforded an opportunity to correct them. Complaints received from outside parties are taken into consideration when awarding new contracts.

The Agency can only move to correct transcript errors and to replace unsatisfactory contractors when deficiencies are brought to our attention. Our Regional Directors also are closely monitoring reporter performance. Having said that, the reality is that in many situations we do not have a large number of companies bidding for the contract and we must select among companies that simply do not have a lot of competition for the contract. The Agency's efforts to obtain local contractors have met with limited success. However, the Agency is continuing our initiative in this regard and will give strong consideration to local contractors that respond to our solicitations.