

Transcript Redaction Procedure

General information

Attorneys and self-represented parties are responsible for reviewing transcripts of court sessions and providing the court reporter or transcriber with a statement of the redactions needed.¹ Redaction procedures occur during the 90-day period (called the “restriction period”) following the filing of an unredacted transcript. Subject to exceptions, a filed transcript is immediately available on the public terminals in the clerk’s offices. For redaction purposes, a transcript may be inspected using the public terminals or purchased from the court reporter (or, where the hearing was digitally recorded, the transcriber).²

At the end of the restriction period, a redacted transcript is made publicly available (e.g., it is available on PACER and can be released to the public). If no redactions were made, the court assumes redaction was unnecessary and the unredacted transcript is made publicly available.

Note: The clerk’s office cannot make a copy of a transcript during the restriction period and will refer anyone requesting a copy to the court reporter or transcriber who prepared the transcript.

Exceptions:

- By order of the Nebraska Judicial Council, access to voir dire transcripts is restricted to case participants. They are not available to the public even after the restriction period ends and are not subject to redaction requirements. A case participant may purchase the voir dire portion of a transcript from the court reporter or transcriber.
- Pursuant to 18 U.S.C. § 3509(d), all papers (including transcripts) to be filed in court that disclose “the name of or any other information concerning” a child victim or a child witness in criminal cases shall be filed under seal. These transcripts are not available on the public terminals and are not made remotely accessible to case participants or the public. A case participant may review the transcript in camera in the clerk’s office or purchase it from the court reporter or transcriber for redaction purposes.

IMPORTANT REMINDER

Counsel should make every effort to keep personal information out of a transcript. As a reminder, unredacted transcripts are generally available on the public terminals in the clerk’s offices (subject to the exceptions above). So, while unredacted transcripts may

¹ The redaction of transcripts of court proceedings is governed by Fed. R. Civ. P. 5.2; Fed. R. Crim. P. 49.1, 18 U.S.C. § 3509(d) (governing child victim and child witness information in criminal cases); *Judicial Conference Policy on Privacy and Public Access to Electronic Case Files* (March 2008) (attached to this document); NECivR 5.3; and NECrimR 49.1.1.

² Court reporters and transcribers may not charge an additional fee to redact a transcript.

not be available to the public on PACER prior to redaction, they are open to inspection at the public terminals. Counsel should take this into account when questioning witnesses or making other statements in court.

Individuals responsible for reviewing the transcript

The following individuals are required to review the transcript for personal data that must be redacted under the federal rules:

- each party's attorney;
- standby counsel assisting a pro se defendant; and
- unrepresented parties.³

Attorney (or self-represented party) procedure⁴

Follow these steps:

STEP	ACTION
1	<p>Review of the Transcript</p> <p>Within seven calendar days of the transcript being filed, review the transcript to determine if any portion of a transcript must be redacted to comply with Fed. R. Civ. P. 5.2, Fed. R. Crim. P. 49.1, or 18 U.S.C. § 3509(d).⁵ Unless otherwise ordered by the court, you must review:</p> <ul style="list-style-type: none">• opening and closing statements made on the party's behalf;• statements of the party;• testimony of any witness called by the party;• sentencing proceedings; and• any other portion of the transcript as ordered by the court. <p>If redactions are necessary, proceed to the following steps. If no redactions are necessary, no further action is required.</p>
2	<p>Notice of Intent to Request Redaction</p> <p>Within seven calendar days of the transcript being filed, file a Notice of Intent to Request Redaction if any portion of a transcript must be redacted to comply with Fed. R. Civ. P. 5.2, Fed. R. Crim. P. 49.1, or 18 U.S.C. § 3509(d).</p> <p>The form is available on the Forms page at https://www.ned.uscourts.gov/internetDocs/forms/noticeintent.pdf. The Notice of Intent to Request Redaction event is available in CM/ECF in the Notices menu.</p>

³ These individuals are responsible for reviewing the transcript even if the person requesting the transcript is a judge, a member of the media, or a member of the public.

⁴ The deadlines set forth in this procedure may only be extended by court order.

⁵ See Step 3 below for a detailed list of items that must be redacted to comply with Fed. R. Civ. P. 5.2, Fed. R. Crim. P. 49.1, and 18 U.S.C. § 3509(d).

STEP	ACTION						
3	<p data-bbox="386 254 678 289">Redaction Request</p> <p data-bbox="386 291 1339 363">Within 21 calendar days of the transcript being filed, take one of the following actions:</p> <table border="1" data-bbox="440 401 1382 1551"> <thead> <tr> <th data-bbox="444 407 891 464">If...</th><th data-bbox="891 407 1377 464">Then...</th></tr> </thead> <tbody> <tr> <td data-bbox="444 464 891 1205"> <p data-bbox="451 474 873 546">A transcript must be redacted because it contains:</p> <ul data-bbox="451 556 873 1194" style="list-style-type: none"> • a social security number or taxpayer identification number, • a birth date, • the name of an individual known to be a minor, • a financial account number, • the home address of an individual (applicable to criminal cases only), or • the “name of or other information concerning” a child victim or a child witness (applicable to criminal cases only)⁶ </td><td data-bbox="891 464 1377 1205"> <p data-bbox="902 474 1365 764">File a Redaction Request. The reporter or transcriber may then redact the information without a court order. List the transcript page and line number where the information to be redacted appears and the type of information to be redacted.</p> <p data-bbox="902 810 1360 1062">The Redaction Request event is available in CM/ECF in the Other Documents menu. This is a restricted event. Only case participants and court users can see documents filed using this event.⁷</p> </td></tr> <tr> <td data-bbox="444 1205 891 1545"> <p data-bbox="451 1215 873 1325">You seek redaction for any reason other than those listed immediately above</p> </td><td data-bbox="891 1205 1377 1545"> <p data-bbox="902 1215 1360 1535">The information may be redacted only with the court’s leave. To seek leave to redact other information, use the Redact event in the Motions menu. This is a restricted event. Only case participants and court users can see documents filed using this event.</p> </td></tr> </tbody> </table>	If...	Then...	<p data-bbox="451 474 873 546">A transcript must be redacted because it contains:</p> <ul data-bbox="451 556 873 1194" style="list-style-type: none"> • a social security number or taxpayer identification number, • a birth date, • the name of an individual known to be a minor, • a financial account number, • the home address of an individual (applicable to criminal cases only), or • the “name of or other information concerning” a child victim or a child witness (applicable to criminal cases only)⁶ 	<p data-bbox="902 474 1365 764">File a Redaction Request. The reporter or transcriber may then redact the information without a court order. List the transcript page and line number where the information to be redacted appears and the type of information to be redacted.</p> <p data-bbox="902 810 1360 1062">The Redaction Request event is available in CM/ECF in the Other Documents menu. This is a restricted event. Only case participants and court users can see documents filed using this event.⁷</p>	<p data-bbox="451 1215 873 1325">You seek redaction for any reason other than those listed immediately above</p>	<p data-bbox="902 1215 1360 1535">The information may be redacted only with the court’s leave. To seek leave to redact other information, use the Redact event in the Motions menu. This is a restricted event. Only case participants and court users can see documents filed using this event.</p>
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4	<p data-bbox="386 1577 699 1612">Redacted Transcript</p> <p data-bbox="386 1614 1372 1719">Within 31 calendar days of the transcript being filed, or longer if the court so orders, the court reporter or transcriber must file the redacted transcript.</p>						

⁶ See Fed. R. Civ. P. 5.2; Fed. R. Crim. P. 49.1; 18 U.S.C. § 3509(d) (governing child victim and child witness information in criminal cases).

⁷ If a Notice of Intent to Request Redaction was filed, but no Redaction Request was filed within 21 calendar days, the court will enter an order to show cause.

Information relevant to CJA Attorneys

An attorney appointed pursuant to the Criminal Justice Act (CJA) is entitled to compensation under the CJA for functions performed to fulfill his or her obligations to review and redact transcripts. See the "Policy Note" in the *Judicial Conference Policy on Privacy and Public Access to Electronic Case Files* (March 2008) (attached) for specific guidance.

Questions

Please direct all questions concerning this procedure to the Office of the Clerk. Dial (402) 661-7350 or (866) 220-4381 for Omaha, and (402) 437-1900 or (866) 220-4379 for Lincoln.

Revision control log

Date	Comments	By
08/23/19	Procedure rewritten. Prior procedure archived.	GA



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

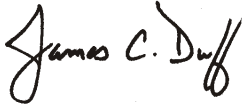
JAMES C. DUFF
Director

WASHINGTON, D.C. 20544

May 2, 2008

MEMORANDUM

To: All United States Judges
Clerks, United States Courts

From: James C. Duff 

RE: REVISED VERSION OF JUDICIAL CONFERENCE PRIVACY POLICY
(**INFORMATION**)

At its March 2008 session, the Judicial Conference approved revisions to its Policy on Privacy and Public Access to Electronic Case Files (Privacy Policy). The revisions reflect the new Federal Rules of Practice and Procedure that protect the privacy and security of electronic court filings. A copy of the revised policy is attached.

The new and amended Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure which took effect on December 1, 2007, superceded most of the Privacy Policy. Only two elements of the pre-existing Privacy Policy remained — exclusion of certain documents from criminal case files (also referred to in the Committee Note to new Criminal Rule 49.1) and procedures to ensure redaction of personal data identifiers that are now specified in the rules. The revisions approved by the Conference in March:

- eliminate the obsolete elements;
- clarify the manner in which victim information in criminal case filings can be protected;
- expand the time within which attorneys must notify the court that they will seek redactions from five to seven calendar days after the transcript is delivered to the court;
- establish a 10-day deadline for court reporters to complete the requested redactions;
- require both the government and the defendant to review transcripts of sentencing proceedings; and
- make the language of the policy stylistically consistent with the Federal Rules.

If you have any questions about the current Privacy Policy, please contact the Court Administration Policy Staff at (202) 502-1560.

Attachment

Judicial Conference Policy on Privacy and Public Access to Electronic Case Files

March 2008

Amendments to the Appellate, Bankruptcy, Civil, and Criminal Rules to implement the requirements of the E-Government Act of 2002 took effect on December 1, 2007. The new rules codify, to a large extent, the 2001 Judicial Conference privacy policy, as revised in 2003, requiring redaction of personal identifier information from filings.¹ The personal identifiers to be redacted are Social Security numbers, names of minor children, financial account numbers, dates of birth, and, in criminal cases, home addresses.²

Because of the enactment of the rules, the previous policy is no longer operative except for two portions of the earlier privacy policy that remain in force, separate from the new rules. They are listed below.

I. Documents in criminal case files for which public access should not be provided

The following documents in a criminal case shall not be included in the public case file and should not be made available to the public at the courthouse or via remote electronic access:

- unexecuted summonses or warrants of any kind (e.g., search warrants, arrest warrants);
- pretrial bail or presentence investigation reports;
- statements of reasons in the judgment of conviction;
- juvenile records;
- documents containing identifying information about jurors or potential jurors;
- financial affidavits filed in seeking representation pursuant to the Criminal Justice Act;
- ex parte requests for authorization of investigative, expert or other services pursuant to the Criminal Justice Act; and
- sealed documents (e.g., motions for downward departure for substantial assistance, plea agreements indicating cooperation or victim statements).

II. The redaction of electronic transcripts of court proceedings

Courts making electronic documents remotely available to the public shall make electronic transcripts of proceedings remotely available to the public if such transcripts are prepared. Prior to being made electronically available from a remote location, however, the transcripts must conform to Fed. R. Civ. P. 5.2(a), Fed. R. Crim. P. 49.1(a), or Fed. R. Bankr. P. 9037(a).

¹ JCUS-SEP/OCT 01, pp. 48-50 and JCUS-SEP 03, pp. 15-16.

² Fed. R. App. P. 25(a), Fed. R. Bankr. P. 9037, Fed. R. Civ. P. 5.2, and Fed. R. Crim. P. 49.1.

Once a prepared transcript is delivered to the clerk's office pursuant to 28 U.S.C. § 753, the attorneys in the case are (or, where there is a self-represented party, the party is) responsible for reviewing it for the personal data identifiers required by the federal rules to be redacted, and providing the court reporter or transcriber with a statement of the redactions to be made to comply with the rules. Unless otherwise ordered by the court, the attorney must review the following portions of the transcript:

- (a) opening and closing statements made on the party's behalf;
- (b) statements of the party;
- (c) the testimony of any witnesses called by the party;
- (d) sentencing proceedings; and
- (e) any other portion of the transcript as ordered by the court.

Within seven calendar days of the delivery by the court reporter or transcriber of the official transcript to the clerk's office, each attorney must inform the court, by filing a notice of redaction with the clerk, of his or her intent to direct the redaction of personal data identifiers from the electronic transcript of the court proceeding. If no such notice is filed within the allotted time, the court will assume redaction of personal data identifiers from the transcript is not necessary.

An attorney serving as "standby" counsel appointed to be available to assist a pro se defendant in his or her defense in a criminal case must review the same portions of the transcript as if the pro se defendant were his or her client. If the transcript relates to a panel attorney representation pursuant to the Criminal Justice Act (CJA), including serving as standby counsel, the attorney conducting the review is entitled to compensation under the CJA for functions reasonably performed to fulfill the redaction obligation and for reimbursement for related reasonable expenses.

A party is to submit to the court reporter or transcriber, within 21 calendar days of the transcript's delivery to the clerk, or longer if a court so orders, a statement indicating where the personal data identifiers to be redacted appear in the transcript. The court reporter or transcriber must redact the identifiers as directed by the party.

These procedures are limited to the redaction of the specific personal data identifiers listed in the rules. During the 21-day period, or longer if the court so orders, an attorney may move the court for additional redactions to the transcript. The transcript shall not be made available on the internet until the court has ruled upon any such motion.

The court reporter or transcriber must, within 31 calendar days of the delivery of the transcript to the clerk of court, or longer if the court so orders, perform the requested redactions, and file a redacted version of the transcript with the clerk of court. The original unredacted electronic transcript should be retained by the clerk of court.

Policy Note

This policy applies to transcripts made available via CM/ECF, WEBPACER, PACER, RACER or a non-court related electronic depository (e.g., Exemplaris). It does not affect in any way the obligation of the court reporter or transcriber, pursuant to Judicial Conference policy, to promptly deliver to the clerk of court the court reporter's or transcriber's original records of a proceeding or the inclusion of a transcript with the records of the court.

If a party desires to respond to a motion for additional redaction, the court may establish a briefing schedule.

Nothing in this policy creates a private right of action.

Nothing in this policy changes any rules or policies with respect to sealing or redaction of court records for any other purpose.

This policy does not affect or limit the right of any party (or any other person or entity) to order production of a transcript on an expedited basis. This policy does not affect any court rules or ruling requiring the sealing of materials or the protection of sealed materials.

An attorney appointed pursuant to the Criminal Justice Act (CJA) is entitled to compensation under the CJA for functions performed to fulfill his or her obligations under the policy, including the following: (1) traveling to gain access to the transcript, if needed; (2) reviewing a transcript to determine whether to file notice of intent to redact; (3) filing a notice of intent to redact or a motion for an extension of time; (4) reviewing a transcript to determine the location of information to be requested to be redacted or whether to file a motion for additional redaction; (5) preparing and filing a redaction request or motion; and (6) other actions (including creating pleadings, attending hearings or other follow-up). The attorney is also entitled to reimbursement under the CJA for the costs of obtaining a transcript for purposes of review. If a case involving a CJA representation has already been closed and the original attorney is no longer available, or if standby counsel is no longer available, new counsel may be appointed under the CJA and compensated as outlined above. In the event that the original appointed counsel is still available, but has filed a final voucher for the underlying case, the attorney shall be permitted to file a supplemental voucher for compensation.

Extensions of time to comply with the deadlines set forth in these procedures should not be routinely granted, due to the potential for delay of court of appeals proceedings in the event redaction procedures extend beyond 31 days.