

Transcript Redaction Procedure¹

Notice to the Bar

At its September 2007 session, the Judicial Conference approved a new policy regarding the availability of transcripts of court proceedings.

Each party is required to review a transcript to redact personal information covered by the Judicial Conference's privacy policy, Federal Rule of Civil Procedure 5.2, and Federal Rule of Criminal Procedure 49.1.² A party may review a transcript for redaction purposes either by purchasing a copy from the court reporter or transcriber or by inspecting the transcript at the courthouse using the public terminal.³

During the 90-day restriction period, a party in the case who purchases the transcript will be given remote electronic access to the transcript via CM/ECF and PACER.⁴ However, members of the public who purchase a transcript from the court reporter or transcriber will not be granted remote electronic access until after the restriction period ends. At that time, the public will have remote access only to a redacted version of the transcript if it was redacted during the 90-day restriction.

The PACER fees apply at all times when accessing transcripts remotely. Charges will accrue for the entire transcript rather than being capped at 30 pages.

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

¹ This procedure supersedes the procedures established on January 24, 2004, as amended on June 24, 2004, February 9, 2005, November 10, 2005, May 16, 2006, and May 15, 2007, in conjunction with the court's participation in a pilot project conducted by the Administrative Office of the United States Courts regarding the electronic availability of civil and criminal transcripts. See Administrative Office memorandum. The special redaction procedures for transcripts and the 90-day restriction policy apply only to transcripts of federal courtroom procedures. Other transcripts, such as those of depositions taken outside of court or of proceedings of state courts or other jurisdictions, are subject to the rules and redaction requirements that apply to other filings by parties.

² The best practice is to keep personal information out of the transcript in the first place. Counsel should take this into account when questioning witnesses or making other statements in court. If information subject to this policy is mentioned in court, counsel may ask the judge to have it stricken from the record or partially redacted.

³ During the 90-day restriction period, both unredacted and redacted transcripts will be available at the public terminals in the clerk's office for inspection only. The clerk's office cannot make a copy of a transcript during the restriction period, and will refer anyone requesting a copy of a transcript to the court reporter or transcriber who prepared it.

⁴ When a federal agency such as the Department of Justice orders a transcript, the court reporter or transcriber will grant the agency immediate access to the transcript in CM/ECF, without regard to whether the court reporter or transcriber has already received payment for the transcription.

Effective date

This procedure applies to all transcripts of proceedings filed on or after May 12, 2008, regardless of when the proceeding took place.

Individuals responsible for reviewing the transcript

The following individuals are required to review the transcript for personal data that should be redacted:

- each party's attorney,
- "standby counsel" assisting a *pro se* defendant, and
- unrepresented parties.

Note: Redaction responsibilities apply to attorneys even if the person requesting the transcript is a judge or a member of the media or the public.

Parts of the transcript that must be reviewed

The parts of the transcript that must be reviewed include:

- opening and closing statements made on behalf of the represented party,
- any statements made by the party,
- the testimony of any witnesses called by the party; and
- any other portion of the transcript as ordered by the court.

Note: By order of the Nebraska Judicial Council, the District of Nebraska restricts access to voir dire transcripts pursuant to the E-Government Act. In the unusual case where an attorney elects to have voir dire transcribed, the voir dire portion of the transcript will never be made available to the public remotely, even after the 90-day restriction is lifted. As a consequence, the voir dire portions of a transcript are not subject to redaction requirements. The party requesting the transcript will have remote access to the voir dire portions only after purchasing a copy from the court reporter or transcriber.

Attorneys must file Notice to Request Redaction

Within seven calendar days after the court reporter or transcriber files the official transcript on CM/ECF, a party must file a Notice of Intent to Request Redaction. If a party does not file notice during the seven-day period, the court will assume that redaction of personal data is not necessary. The transcript will remain restricted during the 90-day period even if no notice is filed.

A Notice of Intent to Request Redaction is available on the court's Web site at <http://www.ned.uscourts.gov/forms/noticeintent.pdf>.

Time to review the transcript

After filing a Notice of Intent to Request Redaction, a party has 21 calendar days from the filing of the unredacted transcript to file a redaction request. The redaction request must list the places in the transcript where personal information to be redacted appears. During the 21-day period, the transcript is available for inspection at the court's public terminal or for purchase from the court reporter or transcriber, but it will not be available remotely to the public on PACER or for copying from the court's public terminals until the 90-day restriction period has ended.

During the 21-day period, or longer if the court so orders, parties may move for additional redactions to the transcript. The transcript will not be available through PACER or for copying from the court's public terminal until the court has ruled on any such motion. The court may allow more than the 21-day period, for good cause shown.

If a redaction request is not filed within 21 calendar days, the court will enter an order to show cause.

Court Reporter or transcriber will file redacted transcript

The court reporter or transcriber must, within 31 calendar days of the filing of the transcript, or longer if the court so orders, perform the requested redactions, and file a redacted version of the transcript on CM/ECF.

Redacting personal data

Personal data must be redacted as follows:

- Social Security numbers should show only the last four digits.
- Birth dates should contain only the year of birth.
- Individuals known to be minors should be referred to with initials.
- Financial account numbers should be redacted to the last four digits.
- In criminal cases only, home addresses should reveal only the city and state.

See Fed. R. Civ. P. 5.2 and Fed. R. Crim. P. 49.1. Other personal information may be redacted only with the court's leave. See NECivR 5.3(b) and NECrimR 49.3(b).

Compensation of CJA Attorneys

Attorneys appointed under the CJA are eligible for compensation for reasonable time spent complying with the redaction procedure and for reimbursement of related expenses. Examples of activities related to the procedure which could be covered include:

- the cost of obtaining the transcript,

- travel expenses to gain access to the transcript,
- time spent reviewing the transcript to determine the need for redaction,
- time spent and expenses incurred filing a notice of redaction,
- time spent on preparing and filing a redaction request, and
- time spent on motion practice relating to the transcript's redaction.

If a case involving a CJA representation has already been closed, and the original attorney (or standby counsel) is no longer available, a new attorney may be appointed under the CJA and compensated as outlined above. If the original appointed attorney is still available, but has filed a final voucher for the underlying case, the attorney may file a supplemental voucher for compensation.

Questions

Please direct all questions concerning this procedure to the Office of the Clerk. Dial 402.661.7350 or toll free at 1.866.220.4831 for Omaha. Dial 402.437.1900 or toll free at 1.866.220.4379 for Lincoln.

Revision control log

Date	Comments	By
05/25/07	Procedure approved.	
05/05/08	Changed five business days to seven calendar days pursuant to the revised version of Judicial Conference privacy policy. See AO memo dated 05/02/08.	MTB
04/14/15	Converted procedure to Word from WordPerfect.	SEC



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

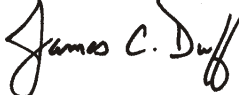
JAMES C. DUFF
Director

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.