

# Electronic Availability of Transcripts of Court Proceedings

This court has provided public access to transcripts of court proceedings. In doing so, it will follow the attached Judicial Conference policy on electronic availability of transcripts of court proceedings before making official transcripts electronically available to the public. The policy will apply to all transcripts of proceedings or parts of proceedings ordered on or after August 1, 2007 regardless of when the proceeding took place. Please read this policy carefully.

The policy establishes a procedure for counsel to request the redaction from the transcript of specific personal data identifiers before the transcript is made electronically available to the general public. A party must file a notice of intent to request redaction within five business days of the filing of the official transcript by the court report/transcriber. If a party fails to request redaction within this time frame, the transcript may be made electronically available without redaction. A copy of the officially filed transcript will be available for review or purchase from the clerk's office or court reporter/transcriber during this five day period. This copy of the transcript may be in paper format at 10¢ a page or disk/CD format for \$26 each.

If a party files a redaction notice, the transcript is not to be made remotely electronically available to the general public until the redactions are performed. A copy of the officially filed transcript will be available for review or purchase from the clerk's office or court reporter/transcriber during this time. Within 21 calendar days from the filing of the transcript with the clerk, or longer if ordered by the court, the parties must submit to the court reporter/transcriber a statement indicating where the personal identifiers appear in the transcript by page and line and how they are to be redacted. For example, if a party wanted to redact the Social Security number 123-45-6789 appearing on page 12, line 9 of the transcript, the statement would read: "Redact the Social Security number on page 12, line 9 to read xxx-xx-6789." Parties are only responsible for reviewing and indicating the redactions in the testimony of the witnesses they called and their own statements (e.g. opening statements and closing arguments). Only the personal identifiers listing in the Judicial Conference policy on the electronic availability of transcripts may be redacted by request. If a party wants to redact other information, that party should move the court for further redaction by separate motion served on all parties and the court reporter/transcriber within the 21 day period.

## **Safeguarding Personal Information in Electronic Transcripts 2007**

The Judicial Conference of the United States has implemented policies to protect sensitive private information about parties, witnesses, and others involved in a civil, criminal, or bankruptcy case. To that end, all documents filed with the court and made available to the public, whether electronically or on paper, should limit certain information as follows:

- for Social Security numbers, use only the last four digits;
- for financial account numbers, use only the last four digits;
- for names of minor children, use only their initials;
- for dates of birth, use only the year; and
- (in criminal cases only) for home addresses, use only the city and state.

The Judicial Conference has approved a similar policy for electronic transcripts, and this policy applies to any court that makes transcripts available to the public electronically. The parties have five business days after the court reporter or transcriber has filed the official transcript with the clerk's office to review the transcript and file a notice of request for redaction. They have a total of twenty-one days, or longer if ordered by the court, from the time the official transcript is filed to submit the actual request for redaction. During that time, the transcript is available for review or purchase from the clerk's office.

Although a limited number of courts are currently making electronically filed transcripts available to the public, it is anticipated that all courts will eventually do so.

Rather than relying on the redaction process, the better practice is to keep sensitive information out of the transcript in the first place. Therefore, you are encouraged to begin now, even if electronic transcripts are not yet in use in your district, to instruct attorneys to avoid eliciting or mentioning the restricted information. Doing this, whether the record is on paper or electronic, will better protect private data and will save time for everyone—attorneys, court reporters, court staff, and judges. It will reduce the likelihood of inadvertent disclosure of sensitive information, as well as the time needed to review records, make redactions, and handle requests for extensions or sealing the record.

Therefore, it would be helpful for courts to advise the parties—at hearings, pretrial conferences, or the start of trial—to avoid asking for or mentioning restricted information. A sample advisory is provided below. Judges may also find it appropriate to intervene to instruct a witness to limit an answer in order to avoid giving restricted information, or to strike such an answer if already given. For your convenience, a copy of the JCUS electronic transcript policy is provided after the advisory.

**Sample Advisory for Limiting Personal  
Information in Transcripts**

The judiciary's privacy policy restricts the publication of certain personal data in documents filed with the court. The policy requires limiting Social Security and financial account numbers to the last four digits, using only initials for the names of minor children, and limiting dates of birth to the year. [For criminal cases, also limit home addresses to city and state.] However, if such information is elicited during testimony or other court proceedings, it will become available to the public when the official transcript is filed at the courthouse unless, and until, it is redacted. The better practice is for you to avoid introducing this information into the record in the first place. Please take this into account when questioning witnesses or making other statements in court. If a restricted item is mentioned in court, you may ask to have it stricken from the record or partially redacted to conform to the privacy policy, or the court may do so on its own motion.

*Note:* This document was prepared at the request of the Judicial Conference Committee on Court Administration and Case Management (CACM), which has oversight responsibility for the Judicial Conference's privacy policies. It was prepared in consultation with and reviewed by the CACM Committee and its staff, and any questions about the privacy policy or this document should be directed to Susan Del Monte at 202-502-1814 or [Susan\\_Del\\_Monte@ao.uscourts.gov](mailto:Susan_Del_Monte@ao.uscourts.gov).

Below is the Judicial Conference's policy on the electronic availability of transcripts that the Conference adopted in 2003, as revised in March 2007. It is applicable to all district and bankruptcy courts making transcripts available electronically to the public.

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### **Electronic Availability of Transcripts of Court Proceedings**

Courts making electronic documents remotely available to the public, whether documents are filed electronically or converted to electronic form, shall make electronic transcripts of proceedings remotely available to the public if such transcripts are otherwise prepared.

Within five business days of the filing by the court reporter/transcriber of the official transcript with the clerk's office pursuant to 28 U.S.C. § 753, each party shall inform the court, by filing a notice of redaction with the clerk, of the party's intent to redact personal data identifiers from the electronic transcript of the court proceeding. Such personal data identifiers include: Social Security numbers; financial account numbers; names of minor children; dates of birth; and home addresses of individuals. The filing of this notice triggers the procedures set out below. 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, and the transcript may be made electronically available at the close of the fifth business day, unless the court, for good cause related to the application of the Judicial Conference policy on privacy and public access to electronic case files, finds that the transcript should not be available electronically for up to a period of 60 days.

An attorney is only responsible for reviewing for redaction, and providing any redactions to the court reporter for, the testimony of the witnesses called on behalf of the party and opening and closing statements made on behalf of the party. In cases where "standby" counsel is appointed to be available to assist a pro se defendant in his or her defense, such counsel is only responsible for reviewing for redaction, and providing any redactions to the court reporter for, the testimony of the witnesses the defendant called and the defendant's opening and closing statements. In a proceeding where only the parties are present (e.g., entry of plea or sentencing) counsel is responsible for reviewing his or her own remarks (and those of predecessor counsel) and those of his or her client for redaction purposes.

If the transcript relates to a panel attorney representation pursuant to the Criminal Justice Act (CJA), the attorney conducting the review is entitled to compensation under the CJA for functions performed to fulfill the redaction obligation, including the following activities: (1) gaining access to the transcript, including travel, if needed; (2) reviewing to determine whether to file notice of intent to redact; (3) filing notice of intent to redact or motion for an extension of time; (4) reviewing for redaction request or motion; (5) preparing and filing redaction request or motion; and (6) other (including pleadings, hearings or other follow-up).

The panel attorney is also entitled to reimbursement under the CJA for costs associated with obtaining a transcript for purposes of redaction review. Standby counsel appointed to assist a pro se defendant is likewise entitled to compensation and reimbursement. In the event that a case involving a CJA representation has already been closed and the original attorney is no longer available, or in the event that 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, such attorney shall be permitted to file a supplemental voucher for compensation.

If a notice of redaction is filed by any party, following the filing of the official transcript with the clerk's office, the official transcript is not to be made remotely electronically available to the general public. Within 21 calendar days of the filing of the transcript, or longer if the court so orders, the parties shall submit to the court reporter/transcriber a statement indicating where the following personal data identifiers appear in the transcript: Social Security numbers; financial account numbers; names of minor children; dates of birth; and home addresses of individuals.

The court reporter/transcriber shall partially redact these personal data identifiers from the electronic transcript as follows:

- Social Security numbers to the last four digits;
- financial account numbers to the last four digits;
- dates of birth to the year;
- names of minor children to the initials; and
- (in criminal cases only) home addresses to the city and state.

During the 21-day period, or longer if the court so orders, attorneys may move the court for any additional redactions to the transcript. The transcript shall not be electronically disseminated until the court has ruled upon any such motion.

The Director of the Administrative Office may lengthen the period of time for electronic filing of a transcript when, in the Director's judgment, a district justifies such an extension.

### **Policy Note**

This policy is intended to apply to electronic transcripts, whether originally filed in electronic form or converted from hard copy to electronic form. It applies to electronic 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/transcriber to file promptly with the clerk of court the court reporter's/transcriber's original records of a proceeding or the inclusion of a filed transcript with the records of the court pursuant to 28 U.S.C. § 753. This policy does not affect the obligation of the clerk to make the official transcript included in the court file available for copying by

the public without further compensation to the court reporter/transcriber pursuant to Judicial Conference policy.

If a party desires to respond to any notice of redaction or motion for additional redaction, the court may establish a briefing schedule to provide sufficient time for such response.

Nothing in this policy creates a private right of action.

It is not the intent of this policy to affect court reporter/transcriber compensation in any way.

This policy is intended to deal with the Judicial Conference policy on privacy and public access to electronic case files as it applies to the electronic filing of transcripts. It is not intended to change any rules or policies with respect to sealing or redaction of court records for any other purpose.

This policy does not prevent the production of a transcript on an expedited basis for a party, or any other person or entity, that may order such a transcript, subject to whatever court rules are currently imposed to protect sealed materials. Any non-party that orders a transcript on an expedited basis should be alerted to the Judicial Conference policy on privacy and public access to electronic case files.