

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN**

**POLICY AND PROCEDURE REGARDING
ELECTRONIC AVAILABILITY OF TRANSCRIPTS**

On December 1, 2007, amendments to the Federal Civil, Criminal and Appellate Rules of Procedure took effect, implementing privacy requirements of the E-Government Act of 2002. The amendments to Fed. R. Civ. P. 5.2, Fed. R. Crim. P. 49.1, and Fed. R. App. P. 25(a)(5) require that personal identification information be redacted from documents filed with the court. This includes Social Security numbers, taxpayer identification numbers, names of minor children, financial account numbers, dates of birth, and in criminal cases, home addresses. In September 2007 and March 2008, the Judicial Conference approved procedures for applying redaction requirements to transcripts of court proceedings. In early 2008, an upgrade to the CM/ECF software provided the ability to implement these procedures.

As used in this policy, the term

- “transcript” means the official record of federal courtroom proceedings. This policy does not apply to sealed transcripts and other transcripts, such as those of depositions or of proceedings of state courts or other jurisdictions. Other transcripts are subject to the rules and redaction requirements applicable to other filings by parties.
- “counsel of record” means an attorney who has appeared on behalf of a client, including an attorney serving as “standby” counsel appointed to assist a *pro se* defendant in the defense of a criminal case.

I. FILING AND INITIAL ACCESS TO TRANSCRIPT

A. Filing of Transcript

Under 28 U.S.C. § 753(b), the court reporter or transcriber must deliver promptly a certified copy of any transcript to the clerk of court for the records of the court. The court reporter, contract court reporter, or transcriber will electronically file the official transcript in CM/ECF. Notice of this filing will be sent electronically to all registered counsel of record. The Notice of Electronic Filing (NEF) informs parties and registered attorneys of the redaction requirements, the 90-day restriction, and how to obtain the transcript during the restriction period. This notice will be sent manually by the clerk to unregistered attorneys and *pro se* parties.

B. Initial Access to Transcript

For a period of 90 days¹ after filing, access to the transcript document will be restricted to:

- court staff
- public terminal users
- counsel of record or parties who have purchased the transcript from the court reporter/transcriber and who have requested remote electronic access to same; and
- other persons as directed by the court, e.g. appellate attorneys

During this 90-day period, court staff may not copy or print the transcript for a requester. All requests for the transcript during this time will be referred to the court reporter or transcriber.

II. REDACTION REQUIREMENT

A. Responsibility to Review Transcript

1. The responsibility of reviewing transcripts and identifying items for redaction rests solely with counsel of record². Unless otherwise ordered by the court, counsel of record must review the following portions³ within 14 days of the filing of the transcript:

- opening and closing statements made on the party's behalf;
- statements of the party;
- testimony of any witnesses called by the party;
- all voir dire; and
- any other portion of the transcript as ordered by the court

¹The 90-day period may be extended by the court.

²The redaction responsibilities apply to counsel of record even if the requestor of the transcript is a judge or a member of the public/media. The court reporter, transcriber, and clerk's office staff have no obligation or responsibility in identifying redaction items.

³If only a portion of the transcript is ordered, counsel of record is only responsible for reviewing those portions ordered.

2. Counsel of record must identify the following personal data identifiers eligible for mandatory redaction:

- Social Security numbers
- taxpayer identification numbers
- names of minor children
- financial account numbers
- dates of birth
- in criminal cases, home addresses

B. Notice of Intent

Parties will have fourteen (14) days from the date of filing of the transcript within which to file with the court a Notice of Intent to Request Redaction of the transcript. The notice of intent must not contain any redaction information, but shall only state a party's intent to redact. Any party needing to review the transcript for redaction purposes may purchase a copy from the court reporter/transcriber, or view the transcript at the courthouse using the public terminal located in the lobby of the Clerk's office.

A hard copy of the notice of intent must be served upon the court reporter or transcriber manually, and a proof of service must be filed electronically. If no notice of intent is filed within the allotted time, the court will assume redaction of personal data identifiers from the transcript is not necessary.

Filing a notice of intent does not in any way prevent a transcript from being made public at the expiration of the 90 days. If a notice of intent to redact is filed, and no subsequent request for redaction is filed, the transcript will be available to the public at the expiration of the 90-day deadline.

C. Request for Redaction

1. Party Responsibility

Any party requesting redaction must file a request within 21 days⁴ of the filing of the transcript. The request must specify all personal data identifiers to be redacted and identify where each one appears in the transcript, by page and line number. For example:

Redact the Social Security number 123-45-6789 appearing
on page 10, line 11 to read xxx-xx-6789.

Access to the redaction request in CM/ECF will be restricted to the case

⁴The 21-day deadline may be extended by the court.

participants. A hard copy of the redaction request must be served upon the court reporter or transcriber manually, and a proof of service must be filed electronically.

2. Court Reporter/Transcriber Responsibility

When a request for redaction is served upon the court reporter or transcriber, he or she must, within 31 days of the filing of the original transcript, perform the requested redactions and electronically file a redacted version of the transcript with the clerk of court. Unless otherwise ordered, the court reporter/transcriber shall redact eligible items identified by counsel of record in a request for redaction document as follows:

- Social Security numbers to the last four digits;
- financial account numbers to the last four digits;
- taxpayer identification numbers to the last four digits;
- dates of birth to the year;
- names of minor children to the initials; and
- home addresses to the city and state.

D. Extensions of Time

Extensions of time to comply with the deadlines set forth in this procedure will not be routinely granted, especially when an extension might delay Court of Appeals proceedings.

III. AVAILABILITY OF TRANSCRIPT

A. Transcripts Not Requiring Redaction

At the expiration of the 90-day restriction period, if there are no redaction requests or motions related to the transcript, the transcript will be made available for remote electronic access via PACER. PACER charges will apply as outlined in section (C)(2) below.

B. Transcripts Requiring Redaction

After making all requested redactions, the court reporter/transcriber will electronically file a redacted transcript. The original transcript will remain restricted and only the redacted transcript will be available for remote access via PACER at the expiration of the 90-day restriction period.

If redaction is identified by the parties or counsel of record after the 90-day restriction period has already elapsed, redaction will only occur as ordered by the court.

C. Remote Electronic Access

1. During the 90-day restriction period, remote electronic access will be limited as set forth in I(B). Case participants who purchase the transcript and desire remote electronic access to the document through CM/ECF must submit a written request to the court reporter or transcriber in order to be provided such access.
2. PACER charges will apply for the entire transcript; there is no 30-page cap. The user will incur PACER charges each time a transcript is accessed, even though the user may have previously purchased it from the court reporter and obtained remote access through CM/ECF.
3. Members of the public, including the news media, who purchase a transcript during the 90-day restriction period will not be granted remote electronic access during the restriction period. Remote electronic access will be available as set forth in III(A) and III(B) of this policy.

IV. TRIAL TRANSCRIPTS

To avoid unnecessary effort and expense to the parties and the Court, counsel of record shall meet and confer regarding the anticipated use of personal identification information at trial. If personal identification information may be offered at trial, counsel shall, at the time of the final pretrial conference, electronically file a stipulated redaction request, identifying such personal identification information to be used at trial and authorizing the court reporter to automatically redact the references in the original transcript in the manner required by Fed. R. Civ. P. 5.2(a)(1) through (4) or Fed. R. Crim. P. 49.1(a)(1) through (5). At the commencement of trial, counsel of record shall manually serve a hard copy of the stipulation upon the court reporter, or if the proceeding is to be digitally recorded, upon the courtroom deputy. A proof of service must be filed electronically.

V. REPRESENTATION UNDER CJA

An attorney representing a criminal defendant under the Criminal Justice Act (CJA), including an attorney serving as standby counsel, is entitled to compensation under the CJA for functions reasonably performed to fulfill the obligation to review and redact transcripts, and for reimbursement for related reasonable expenses, including the following:

- traveling to gain access to the transcript, if needed;
- reviewing a transcript to determine whether to file notice of intent to redact;
- filing a notice of intent to redact or a motion for an extension of time;

- reviewing a transcript to determine the location of information to be redacted;
- preparing and filing a redaction request or motion; and
- 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. In a closed case involving CJA representation in which the original attorney or 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.

May 15, 2008
(Revised 1/3/11)