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MEMORANDUM

TO: Clerks, United States District Courts

FROM: Robert Lowney *Bob*

Re: Guidance for Court Reporters and Transcribers on the Electronic Availability of Transcripts in Case Management/Electronic Case Files (CM/ECF) and Transcript Redaction Procedures (Information Only)

This is a follow-up to the memorandum sent to you on January 30, 2008 regarding CM/ECF Release 3.2 software. We have developed the attached guidance entitled "Questions and Answers on the Electronic Availability of Transcripts and Transcript Redaction Procedures," to assist courts, court reporters, and transcribers working with the new policy on electronic access to transcripts. These questions and answers were developed based on the experiences of the four pilot test courts along with input from members of the Court Reporters Advisory Group. This information will also be included in the update to the Court Reporter Manual, Volume 6 of the *Guide to Judiciary Policies and Procedures*.

We would appreciate your sharing this information with the official court reporters, contract court reporters, and transcribers who produce official transcripts of court proceedings. You also may want to share this with your local Bar or post it on your internet site. These questions will be posted on the JNET under District Clerk's Offices/Court Reporting, and the information will be updated periodically.

If you have any questions or comments regarding the guidance, please do not hesitate to contact either Ed Baca at 202-502-1568, or Susan Del Monte at 202-502-1560.

Attachment

cc: District Court Executives

**Questions and Answers on the Electronic Availability of Transcripts
and Transcript Redaction Procedures
February 21, 2008**

- 1 Q. Under the Judicial Conference's electronic availability of transcripts policy, how will court reporters/transcribers file the certified copy of a transcript with the clerk of court?
- A. The clerk of court in each court will provide guidance on how to file the certified transcript copy. In some districts, court reporters/transcribers will be given authority to file the transcripts directly in CM/ECF pursuant to procedures established by the court and will be able to upload the transcripts to the case file. In other districts, the transcripts will have to be emailed to a designated member of the clerk's office staff. In still other districts, a disc with the transcript will have to be provided to the clerk's office.
- 2 Q. When does the electronic transcript have to be filed with the clerk of court?
- A. The requirement to provide a certified copy of a transcript to the clerk for the records of the court has not changed. As in the past, when a transcript is originally produced, a certified copy must be promptly delivered to the clerk. The Guide to Judiciary Policies and Procedures states that the transcript copy should be delivered to the clerk (or his/her designee) concurrently with - but not later than 3 working days after - delivery to the requesting party.
- 3 Q. Will court reporters/transcribers have to electronically file transcripts already filed with the clerk (retroactively)?
- A. Electronic filing with the clerk is required prospectively only for all transcripts filed with the clerk on or after the date the court begins operational use of (goes live) CM/ECF release 3.2.
- 4 Q. If the transcription software used by court reporters/transcribers does not print to PDF, are court reporter/transcribers required to purchase the required software, or will the clerk's office provide this software? (This could refer to Adobe Writer software or DOS-based transcription systems.)
- A. Yes, court reporters/transcribers are on their own with getting software to accomplish the electronic filing with the clerk. The redaction policy does not change a court reporter/transcriber's responsibility to provide their own supplies.

- 5 Q. When will the electronic transcript be made remotely available to the public through the PACER system?
- A. The electronic transcript will be remotely available to the public through PACER 90 days after it has been delivered to the clerk of court.
- 6 Q. Will anyone be able to obtain a copy of the transcript during the initial 90-day period after the certified transcript copy has been filed with the clerk?
- A. Yes, any counsel, party, or member of the public wanting a copy of a transcript during the 90-day period will be able to purchase a copy from the court reporter/transcriber. In addition, court staff will have appropriate access during the 90-day period to any transcript filed with the clerk through the CM/ECF system.
- 7 Q. Will counsel, a party, or the public be able to review the transcript during the 90-day period?
- A. Yes, the transcript on the CM/ECF system will be available for review and inspection at the court's public terminal during the 90-day period. However, a clerk's office will not provide copies to counsel, a party or the public during the 90-day period, but rather will refer anyone who wants a copy to the court reporter/transcriber. In addition, any counsel or parties to a case who have received a transcript from a court reporter/transcriber will be given access to the transcript through the CM/ECF system. Counsel of record in a case who have not purchased a copy of the transcript from the court reporter/transcriber will not have access to the transcript through CM/ECF until they purchase it from the court reporter/transcriber or until the 90-day period has expired.
- 8 Q. How will the clerk or the CM/ECF system know which attorneys have purchased a transcript from the court reporter/transcriber?
- A. Each court must determine how this will be handled, but there must be a communication from the court reporter/transcriber to the clerk to enable this access. In some courts, the court reporter/transcriber may be given access to CM/ECF and will be able to provide the remote access. In other courts, the court reporter/transcriber will have to contact a deputy clerk who will allow the access upon notification from the court reporter/transcriber that payment was received.

- 9 Q. For Federal government agencies (including the DOJ) that request and receive a transcript copy from a court reporter/transcriber, does the court reporter/transcriber have to await payment before granting access to the transcript through CM/ECF?
- A. No. Upon completion of the transcript ordered by a Federal government agency, the agency should be granted access to the transcript in CM/ECF.
- 10 Q. Once the certified copy of the transcript is filed with the clerk, may court reporters/transcribers sell copies to other parties requesting the transcript?
- A. Yes, nothing in the new policies restrict counsel, parties, or the public from requesting copies of a transcript from a court reporter/transcriber - - during or after the 90-day period.
- 11 Q. How will a court reporter/transcriber know when to redact a transcript?
- A. The redaction of transcripts will be requested by counsel to a case. Counsel will file a Notice of Intent to Redact within five days of the transcript being delivered to the clerk. Counsel will then follow-up, within 21 calendar days of initial delivery of the transcript to the clerk, with a specific request for redaction noting the page numbers and line numbers where redaction is required.
- 12 Q. If an attorney files a Notice of Intent to Request Redaction or a motion for extension of time to file this notice, and then doesn't submit a Redaction Request, what should be done?
- A. The court will need to take action, either to have the attorney withdraw the Notice of Intent to Request Redaction or to issue a show cause order as to why the attorney has not met the redaction requirements.
- 13 Q. How should the redaction be made?
- A. There are various software programs that are available to assist court reporters/transcribers in the redaction process. The use of these programs is permissible, as long as page and line integrity remains intact. If you do not have access to such a program, you may also manually redact. To manually redact, the court reporter/transcriber should place an "x" in the space of each redacted character. Manual redactions should have the same number of x's as characters deleted in order to preserve page and line numbers of transcripts. Whatever method is used to redact, page and line integrity must be maintained from the original transcript to the redacted transcript.

- 14 Q. Are there any other changes to the format of a redacted transcript?
A. Yes. The title page of the transcript should indicate that it is a redacted transcript immediately below the case caption and before the Volume number and the name and title of the Judge. A notation of “REDACTED TRANSCRIPT” should be inserted on a blank line, and care should be taken to ensure that the addition of this text does not cause changes to the length of the title page. Also, at the end of the transcript, and without causing a “page roll-over” (a smaller font may be used) the redacted transcript should be certified by the court reporter/transcriber stating: “I (we) certify that the foregoing is a true and correct copy of the transcript originally filed with the clerk of court on dy/mo/year, and incorporating redactions of personal identifiers requested by the following attorneys of record: _____ in accordance with Judicial Conference policy. Redacted characters appear as an “x” (or a black box) in the transcript.”
- 15 Q. When requested to redact a transcript, does the word “redacted” need to be put in each redaction? For example: “My son, M (redacted), handled Account No. (redacted) 4567 and must have made a mistake.”
A. No, it is not necessary to note redactions in the body of the transcripts; using x’s (or black boxes) in place of the redacted characters is all that is required in the body of the transcript.
- 16 Q. Once a transcript is electronically filed and a redaction is requested by a party, what is the court reporter/transcriber to do in the event the redactions change the subsequent page and line numbers in said transcript? Parties using the transcript on appeal would have been furnished a transcript with possible inconsistent line/number issues.
A. As described in question 13 above, the page and line numbers should be preserved in the redacted transcript by using x’s (or a black box) for each character redacted or by using a program that does not alter formatting.
- 17 Q. When a court reporter/transcriber electronically files a certified copy of the transcript with the clerk, they also send the transcript to the ordering party. If a transcript is requested to be redacted, the court reporter/transcriber sends the redacted copy of the transcript to the clerk for filing. Does the court reporter/transcriber also send a redacted copy to the ordering party as well?
A. The review of transcripts for information required by the rules to be redacted is required to allow the court to post the transcript electronically for remote public access after the 90-day period. Therefore, there is no

requirement to send a copy of the redacted transcripts to the parties who originally ordered the transcripts. The redacted transcript only needs to be sent to the clerk of court following the same procedure that was used to deliver the unredacted version to the clerk earlier.

- 18 Q. Once the court reporter/transcriber has delivered the electronic transcripts to the clerk of court, if the case is on appeal and the court has previously requested that the court reporter/transcriber provide a paper copy so the paper copy can be sent to the Court of Appeals, who should be responsible for printing and providing the paper copy to the Court of Appeals?
- A. The district court should be responsible for printing a paper copy of the transcript from its records if it is needed by the Court of Appeals. This cost burden should not be placed on the court reporter/transcriber. Eventually, the Court of Appeals will have the ability to print the district court record without having paper copies transmitted from the district court.
- 19 Q. Will the unredacted transcript that is originally filed with the clerk of court be filed under seal?
- A. No, in most instances, the unredacted transcript will be filed as a restricted document, which will allow court staff to view it and print it, and allow the public to view the transcript at the public terminal in a clerk's office. Transcripts will only be sealed pursuant to a court order.
- 20 Q. Will the unredacted transcript that is originally filed with the clerk of court as a restricted document always be a restricted document?
- A. This depends on whether a request for redaction has been received. After the 90-day period, the restriction on any transcript originally filed with the clerk of court will be lifted and the transcript will be available electronically on the CM/ECF and PACER systems - - unless there has been a request for redaction, in which case the redacted transcript will be made available electronically on the CM/ECF and PACER systems and the original unredacted transcript will remain restricted.
- 21 Q. Once a court reporter completes the production of a transcript and files the original with the clerk, does the court reporter then have the obligation to notify the parties that the original transcript has been filed and then provide them with a copy of it?
- A. No. The court reporter does not have the obligation to notify the parties that the certified copy of the transcript has been filed. The CM/ECF system automatically notifies the parties that the transcript has been filed so that the parties are aware that the five-day period within which to request redaction

has begun. The court reporter has no obligation to provide a copy of the transcript to a party unless the party ordered it. After the transcript is filed with the clerk, a court reporter may sell a copy of the transcript to counsel, a party or the public if requested. This copy can be paper or electronic; however, the transcript is not to be made remotely electronically available to the general public before the redaction period has run and the redactions have been completed.

- 22 Q. As the court reporter/transcriber is preparing a transcript, if she/he notices that redactions will be necessary, should the court reporter/transcriber do the redactions then and there? Or, when the transcript is sent to the parties, should the court reporter/transcriber inform the parties that material needs to be redacted at certain page and line numbers? Or should the court reporter/transcriber wait until she/he hears from the parties or the court?
- A. No, court reporters/transcribers do not have the responsibility to redact information unless there is a redaction request made by the parties to the case. Court reporters/transcribers also do not have a responsibility to notify the parties of material that should be redacted. The parties have the responsibility to review the transcripts and request redactions, if necessary.
- 23 Q. What responsibility would the court reporter/transcriber have if the parties did not request redaction but the court reporter/transcriber knows that redaction should take place?
- A. None. It is not the responsibility of the court reporter/transcriber to identify material in the transcript that should be redacted. The Judicial Conference policy imposes that responsibility on counsel.
- 24 Q. How are the statements of redaction (Redaction Requests) prepared by the attorneys for the court reporters to be handled?
- A. There are several ways to handle these statements. They may be filed with the clerk. If they are filed with the clerk, consideration should be given to sealing them if they contain the full text of the personal identifiers at issue. However, if the statement is worded in such a way that the personal information at issue is not repeated (i.e., redact the Social Security number on page 12, line 9 to read xxx-xx-6789.), the document should be public. Filing of the statements with the clerk relieves court reporters from having to handle filing and retrieval of these requests and may be the most appropriate and efficient method of tracking these requests; but, if this method is used, a process for providing notice to the court reporter/transcriber should be developed. If the redaction statements are not filed with the clerk, the court reporters should retain them in their files in

order to have a record to support the redactions that they did. There is no requirement that the redaction statements be served on opposing counsel or parties, although if they are filed with the clerk through CM/ECF, it is assumed that the existence (or non existence) of a certificate of service would address this issue. It should be noted that if these statements contain the actual personal identifiers, all efforts should be made to keep them confidential.

- 25 Q. What are the personal identifiers that a party may request be redacted?
A. The redaction of the following personal identifiers should be requested from counsel:
- Social Security numbers (or taxpayer identification numbers) to the last four digits;
 - financial account numbers to the last four digits;
 - dates of birth;
 - individuals known to be minor children to the initials; and
 - in criminal cases, any home addresses stated in court to the city and state.
- 26 Q. May parties move to redact other information in a transcript other than the specified identifiers?
A. Yes. While the court reporter/transcriber is authorized to redact the specified personal identifiers noted in the answer to question 25 above, the moving party must receive a ruling of the court before other information in the transcript may be redacted.
- 27 Q. Concerns have been expressed in our court over how to address transcripts of voir dire that may contain personal information of jurors. Do you have any guidance on this issue?
A. Like any other instance where use of the redaction procedures may be appropriate, invocation of the redaction procedures is left to the parties or the court. Any personal information other than those items listed in the answer to question 25 above would need to be addressed by separate motion and/or order of the court. Consideration may also be given to sealing of voir dire transcripts or restricting access so that they are not viewable through PACER.
- 28 Q. Is there a fee that the court reporter/transcriber can charge for making the redactions?
A. No. The Judicial Conference has not authorized an additional fee for providing redacted transcripts to the court for the electronic records of the court.

- 29 Q. When a transcript is requested from the reporter/transcriber by a third party (for example, the media or a researcher), what version (redacted or unredacted) should the reporter/transcriber sell?
- A. Courts that participated in a pilot program reported that very few transcripts are redacted, so this issue may not come up as much as you might otherwise think. If both redacted and unredacted versions exist, the redacted transcript is the preferred version to be sold. Selling it instead of the unredacted version will help prevent the dissemination of the personal information that the rules require be redacted in all court filings, and could help in preventing identify theft.
- 30 Q. Once a court reporter/transcriber receives the list of redactions (Redaction Request) from the attorney(s), how long does the court reporter/transcriber have to redact the transcript and provide the redacted transcript to the clerk?
- A. The Court Administration and Case Management Committee has proposed to the Judicial Conference that the redaction procedures be modified to allow the court reporter/transcriber ten days after the deadline for receipt of the attorneys' redaction request to be able to make the redactions and file a redacted transcript with the clerk of court. This time period, just like those for the attorneys to notify the court that redactions are required and to designate the information to be redacted, is extendable by the court. There is, however, a concern that requests for extension of time (whether by a court reporter/transcriber or an attorney) could delay the proceedings in appellate courts, where the filing deadlines for appellate briefs is calculated based on the availability of the record on appeal (which includes the transcript). As a result, extensions of time should not be routinely requested.