



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

May 15, 2007

MEMORANDUM

To: Judges, United States District Courts
Judges, United States Bankruptcy Courts
District Court Executives
Clerks, United States District Courts
Clerks, United States Bankruptcy Courts
Federal Public/Community Defenders

From:

James C. Duff

A handwritten signature in black ink that reads "James C. Duff".

RE: REVISED TRANSCRIPT REDACTION PROCEDURES **(INFORMATION)**

The Judicial Conference's privacy policy for public access to electronic case files contains procedures for redacting personal information¹ from court filings that are electronically available to the public. At its meeting in March 2007, at the request of the Committee on Defender Services and on recommendation of the Committee on Court Administration and Case Management, the Judicial Conference adopted revisions to the transcript redaction procedures to clarify which portions of the transcript should be reviewed and by whom. The revisions also addressed the Criminal Justice Act (CJA) panel attorney eligibility for compensation for the time spent in complying with the redaction procedures, and for reimbursement of related expenses. Lastly, the procedures were revised to clarify that they were not intended to create any private right of action.

Those courts that currently have transcripts of court proceedings available to the public in electronic format should follow the procedures set out below to ensure that the transcripts being made electronically available do not contain the protected personal information.

¹ These items are: Social Security numbers, financial account numbers, dates of birth, names of minor children, and, in criminal cases, home addresses.

First, each party's attorney² is required to review a transcript for information that should be redacted under the Judicial Conference's privacy policy: Social Security numbers should be redacted to 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; and financial account numbers should be redacted to the last four digits. Additionally, in criminal case files, home addresses should reveal only the city and state of residence.

Second, within five business days of a court reporter's delivery of the transcript to the clerk of court, an attorney must file a notice with the court of his or her intent to request redaction of such information from the transcript. An attorney is responsible for reviewing the opening and closing statements made on behalf of the party he or she represents, any statements made by the party, and the testimony of any witnesses called by the party. If no notice is filed during this five-day period, the court may assume that redaction of personal data is not necessary, and may make the transcript electronically available to the public. An attorney serving as "standby counsel" to assist a *pro se* defendant in his or her defense has the same responsibilities as if he or she were the *pro se* party's attorney of record in the case.

Third, once an attorney has filed a notice of intent to request redaction, he or she has 21 days to review the transcript and submit to the court reporter or transcriber a list of the places in the transcript where the personal data to be redacted appears. A court may order this time extended, for good cause shown. The court reporter or transcriber must redact the identifiers, as directed by the party. Also during this time period, an attorney could, by motion, request that additional information be redacted. No remote electronic public access to the transcript is to be allowed until the court has ruled on any such motion.

Fourth, attorneys appointed under the CJA are eligible for compensation for reasonable time spent complying with the redaction procedures and for reimbursement of related expenses. Examples of activities related to the procedures which could be covered include: (1) the cost of obtaining the transcript; (2) travel expenses to gain access to the transcript; (3) time spent reviewing the transcript to determine the need for redaction; (4) time spent and expenses incurred filing a notice of redaction; (5) time spent on preparing and filing a redaction request; and/or (6) time spent on motion practice relating to the transcript's redaction.

² Or, in the case of an unrepresented party, the party should perform the tasks these procedures assign to the attorneys.

Fifth, in the event that a case involving a CJA representation has already been closed, and 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.

Although the redaction procedures are sound, it is the Court Administration and Case Management Committee's strong belief that the best method of preventing harmful disclosure of personal data identifiers through transcripts is to alter courtroom behavior so that the unnecessary information is simply not elicited in the proceeding. To that end, the Committee has asked the Federal Judicial Center (FJC) to educate court personnel and judges about the need to keep personal information covered by the privacy policy out of the court record unless necessary to prove an element of the case. Additionally, the FJC has created a "model advisory" that a judge might wish to read at the start of a hearing to inform the participants of the potential future internet-based availability of a transcript of the proceeding, and of precautions they should take. That advisory, entitled "Safeguarding Personal Information in Electronic Transcripts," is available at: <http://cwn.fjc.dcn/>.

Finally, it is important to emphasize that the Court Administration and Case Management Committee is committed to ensuring that the courts' electronic case files are complete, including transcripts of proceedings. At its upcoming meeting, the Committee will consider recommending to the Judicial Conference some potential changes to help streamline and simplify the redaction procedures. The general tenets of the redaction procedures relating to CJA coverage, as outlined in this memorandum, are not, however, expected to change.

If you have any questions about the redaction procedures, please contact Susan Del Monte, Attorney Advisor, Court Administration Policy Staff, at 202-502-1560 or via email at Susan_Del_Monte/DCA/AO/USCOURTS.

cc: CJA Panel Attorney District Representatives