



NOTICE TO MEMBERS OF THE BAR ON ELECTRONIC AVAILABILITY OF TRANSCRIPTS (TO COMPLY WITH THE E-GOVERNMENT ACT OF 2002)

In 2003, the Judicial Conference of the United States adopted a policy requiring courts to include official transcripts of court proceedings in their electronic case file systems. On September 18, 2007, the Judicial Conference adopted a plan that will incorporate transcripts of court proceedings in the electronic case file system (CM/ECF), while recognizing the court reporters' statutory authority to sell copies of transcripts. The Judicial Conference Committee on Court Administration and Case Management has set an effective date of May 15, 2008 for the new policy.

Under the new policy, electronic transcripts, once ordered by a party or the court and produced by the court reporter, will be available for public inspection (but not copying) at the Clerk's Office as soon as the transcripts are provided to the Clerk of Court¹ as required by 28 U.S.C. § 753. For 90 days after delivery to the Clerk's Office, however, individuals wishing to purchase a copy of a transcript--in either paper or electronic form--must do so through the court reporter or transcriber, as appropriate. (A docket entry in the CM/ECF system will provide information as to how to contact the reporter or transcriber.) An attorney on the case who has purchased a transcript (either an original or a copy) will be given access to the transcript through the court's CM/ECF system during the initial 90-day period, to allow for compliance with the Judicial Conference's redaction policy (*see* www.uscourts.gov/judconfindex.html [Sept. 2007]), as well as for the creation and filing of appellate briefs containing hyperlinks to the transcript. The transcript will be available in CM/ECF for court use at all times. The 90-day delay will protect the court reporters' right to charge for the copies purchased soon after the original is prepared.

To other users, electronic public access to transcripts through the PACER system will be available beginning 90 days after the court reporter or transcriber has provided the transcript to the clerk. At that point, an individual will be able to view, download, or print a copy of the transcript from PACER for eight cents per page, or at the prevailing copy rate from the Clerk's Office. Transcripts will also be available for public copying at the Clerk's Office at that time. No portion of the receipts from PACER access will be provided to the court reporter or transcriber who created the transcript. Of course, parties choosing to do so could purchase copies directly from the court reporter or transcriber after the 90-day period.

¹In the District of New Mexico, the provision or delivery of transcripts to the Clerk pursuant to 28 U.S.C. § 753 is accomplished through the e-filing of the transcript to the record by the court reporter.

Redaction Procedures

First, each party's attorney 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 seven (7) calendar 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 calendar 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.

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.