

**COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544**

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November 14, 2005

MEMORANDUM TO ALL CHIEF JUDGES, UNITED STATES DISTRICT COURTS

SUBJECT: Electronic Transcripts Policy Pilot (**ACTION REQUESTED**)

RESPONSE DUE: December 2, 2005

We are writing to solicit your court's assistance in an important endeavor that the Committees on Court Administration and Case Management, Judicial Resources and Defender Services are undertaking at the direction of the Judicial Conference. At its most recent session, the Conference approved a recommendation of the Committee on Court Administration and Case Management to move forward with implementation of its policy on Electronic Availability of Transcripts originally approved in September 2003. A copy of that policy is attached for your reference.

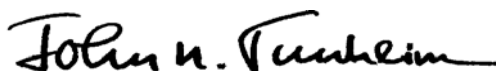
Implementation of this Conference policy was stayed pending a study of the impact of the policy on court reporter income. That study has been completed, thanks to participation by several courts, and the concerns of the court reporters regarding the impact of this policy on their income were addressed by recent Conference action endorsing a proposal to pay the court reporters a portion of the PACER fee charged for electronic access to transcripts. As part of this endorsement, the Conference directed the involved committees to work together to determine the impact of the redaction requirements of the electronic transcript policy on the Defender Services Program. It is important to note that the nationwide application of the policy remains stayed while implementation of the proposal is pursued and the study relating to Defender Services is conducted. This means that courts may make their own decisions regarding electronic access to transcripts until a national policy is implemented; however, courts choosing to make transcripts electronically available to the public should follow the redaction procedures of the Judicial Conference policy.

Our Committees plan to assess the effects of the redaction requirement by means of a newly expanded pilot study that will focus solely on the impact of the policy on electronic

transcripts on the defender community and are inviting your court to be a part of it. Courts participating in the study will follow the policy on electronic transcripts referenced above, which establishes a procedure for redacting transcripts before they are electronically available. This will require the attorneys and court reporters in your district to follow the redaction policy; thereby allowing the gathering of relevant and necessary information. While participating courts may be asked to respond to specific questions about the policy during the study period, the majority of the data and information collection will come from the Criminal Justice Act (CJA) payment system, your federal defender's office and individual attorneys that serve on your court's CJA Panel.

We expect this pilot and study to last for no longer than six months. The Administrative Office will provide operational guidance to courts that elect to participate. Please note that the proposal recently adopted by the Judicial Conference to provide payment to the court reporter preparing the transcripts when the transcript is electronically accessed will **not** be operational during the pilot program, as the legislative and technological amendments it requires have not been accomplished. Thus, court reporters will not receive payment in connection with electronic access to transcripts in the pilot courts.

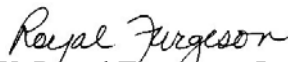
We strongly encourage you to participate in this pilot program. It is only with the cooperation of the courts that we can gather the information necessary to evaluate the impact of the policy of the electronic availability of transcripts on the Defender Services Program. Please contact Katie Simon at the Administrative Office at 202-502-1563 or via email at Katie.Simon@ao.uscourts.gov by November 28, 2005 to indicate that your court will participate or with any questions you may have about the pilot or the electronic transcripts policy.



John R. Tunheim
Chair, Committee on Court Administration
and Case Management



John Gleeson
Chair, Committee on Defender Services



W. Royal Furgeson, Jr.
Chair, Committee on Judicial Resources

Attachment

cc: Clerks, United States District Courts

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 5 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.

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
- 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 is intended to create a private right of action against court reporters/transcribers for any failure to redact the required information or for any errors associated with such redaction.

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.