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To: Clerks, United States Bankruptcy Courts

From: Glen K. Palman 

RE: Implementing the Judicial Conference Transcript Policies
(**INFORMATION**)

Bankruptcy CM/ECF Release 3.2 includes automated solutions for the management of access to transcripts pursuant to Judicial Conference policy, which requires that access to transcripts be limited for 90 days following delivery to the court. An *ad hoc* group of bankruptcy court and AO staff worked together to customize the previously issued district court transcript management guidance for the bankruptcy courts. In conjunction with the Bankruptcy CM/ECF Release 3.2 software documentation, the attached *Bankruptcy Court Guidelines for Implementation of the Judicial Conference Policies on Electronic Availability and Redaction of Transcripts of Court Proceedings*, provides court managers detailed information to assist with court operational decisions.

I am very grateful for the assistance provided by the court staff that served on the *ad hoc* group. They were: Katherine Gould and Joe Falzone, Southern District of Florida, Margaret Gay and Sharon Kologie, District of New Mexico, Dana McWay and James Moeller, Eastern District of Missouri, David Sime, District of Utah, Eva Roeber, District of Nebraska, and Arnaldo Rivera, Northern District of Illinois.

If you have any questions or comments, please contact Robby Robinson at 202-502-1540 or via e-mail at Robby Robinson/DCA/AO/USCOURTS.

Attachment

cc: Judges, United States Bankruptcy Courts

**Bankruptcy Court Guidelines for
Implementation of the Judicial Conference Policies on
Electronic Availability and Redaction of Transcripts of Court Proceedings**
May 2008

At its September 2007 session, the Judicial Conference adopted a policy regarding electronic availability of transcripts of court proceedings¹ and directed the Administrative Office to issue guidance to courts on its implementation. Earlier, at its September 2003 session (JCUS-SEP 03, pp. 16-17), the Judicial Conference approved procedures (revised at its March 2007 session²) to implement the Judiciary's privacy policy (now reflected in Federal Rule of Bankruptcy Procedure 9037) as it applies to electronic availability of transcripts. Accordingly, CM/ECF release 3.2 includes functionality to facilitate implementation of this policy and the procedures.

This guidance document outlines the policy and procedures and, along with the Release Notes for CM/ECF 3.2, is designed to assist courts in complying with the policy. Because there is no single document which constitutes the Judicial Conference electronic transcript policy, courts may want to implement administrative procedures (or enter an administrative order or adopt a local rule) to serve as the authority for these procedures.

I. EXECUTIVE SUMMARY

A. Electronic Availability of Transcript of Court Proceedings. The language from the Judicial Conference's September 2007 session (JCUS-SEP 07, pp. 11-12) regarding electronic availability of transcripts of court proceedings states:

1. A transcript provided to a court by a court reporter or transcriber will be available at the office of the clerk of court for inspection only, for a period of 90 days after it is delivered to the clerk.
2. During the 90-day period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference, the transcript will be available within the court for internal use, and an attorney who obtains the transcript from the court reporter or transcriber may obtain remote electronic access to the transcript through the court's CM/ECF system for purposes of creating hyperlinks to the transcript in court filings and for other purposes.

¹See Honorable John R. Tunheim's memorandum dated November 13, 2007, "Recent Judicial Conference Actions Regarding the Electronic Availability of Transcripts of Court Proceedings" at http://jnet.ao.dcn/Bankruptcy/Memos/2007_Archive/Dir7128.html.

²See James C. Duff's memorandum dated May 15, 2007, "Revised Transcript Redaction Procedures" at http://jnet.ao.dcn/Memos/2007_Archive/Dir7058.html.

3. After the 90-day period has ended, the filed transcript will be available for inspection and copying in the clerk's office and for downloading from the court's CM/ECF system through the judiciary's PACER system.

B. Application of Fed. R. Bankr. P. Rule 9037(a), *Redacted Filings*. The rule, effective December 1, 2007, states:

Unless the court orders otherwise, in an electronic or paper filing made with the court that contains an individual's social-security number and taxpayer-identification number, or birth date, the name of an individual, other than the debtor, known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may include only:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) the minor's initials; and
- (4) the last four digits of the financial-account number.

The redaction procedures for transcripts (as well as the 90-day restriction policy) apply only to transcripts of federal courtroom proceedings.

With the exception of transcripts, redaction of the information described in Fed. R. Bankr. P. Rule 9037(a) is the responsibility of the person filing the document. When a transcript is filed, the attorneys and *pro se* parties who attended the hearing are solely responsible for redaction of the information described in the Rule. Redaction is accomplished only with input from the attorneys and *pro se* parties who attended the hearing. Transcribers are not responsible for identifying a need for redaction or for redacting transcripts absent a request by an attorney or *pro se* party.

The court's responsibility is to follow the Judicial Conference guidelines for providing public access to the transcript and for restricting access in accordance with the Judiciary's privacy policy. The clerk is not required to review documents filed with the court for compliance with this rule.³

C. Snapshot of Process.

1. The court reporter or transcriber (hereinafter "transcriber") files a transcript of court proceedings with the clerk of court.
2. The CM/ECF docket event for the transcript automatically restricts access to the transcript to court staff and public terminal users. The transcript will be

³See the Advisory Committee Notes to Fed. R. Bankr. P. 9037.

available for viewing at the public terminal in the Clerk's Office and will include a permanent header "AVAILABLE AT THE PUBLIC TERMINAL FOR VIEWING ONLY" alerting court staff that they may not copy or print the transcript for a customer during the 90-day restriction period.

3. The date the transcript is filed is the starting date for all deadlines related to restriction and redaction of the transcript.
4. A notice of the filing of the transcript (including notice of the 90-day restriction period and the deadlines related to redaction) is provided:
 - (a) via the docket text of the transcript event and the Notice of Electronic Filing (hereinafter "NEF"), or
 - (b) by separate notice⁴ of the filing of the transcript, or
 - (c) by both (docket text of transcript *and* separate notice).
5. The following deadlines apply to the restriction, redaction, and release of a transcript for public viewing. The first two deadlines are optional for inclusion in a court's CM/ECF dictionary; the last two are mandatory. All can be created when the transcript event (available in the CM/ECF release 3.2 starter dictionary) is docketed. See the flowchart attached to these guidelines for a visual guide.
 - (a) Optional deadline for filing a Notice of Intent to Request Redaction (7 calendar days);
 - (b) Optional deadline for filing a Request for Redaction (21 calendar days);
 - (c) Deadline for filing the redacted version of the transcript (31 calendar days); and
 - (d) Date transcript restriction can be removed (90 calendar days) to allow remote electronic access to the transcript as follows:
 - (i) At the end of the 90-day restriction period, if a redacted version of the transcript is NOT filed and if there are no other redaction documents or motions linked to the transcript, the unredacted version will be made available via remote electronic access and at the public terminal for viewing and printing.

⁴See sample form of notice attached to these guidelines.

(ii) At the end of the 90-day restriction period, if a redacted version of the transcript is filed,

- the redacted version will be made available via remote electronic access and at the public terminal for viewing and printing.
- the unredacted version will NOT be available via remote electronic access but will remain available at the public access terminal and – at the end of the 90-day restriction period – the unredacted version will be available for printing⁵ by court staff unless the Court orders otherwise.⁶

6. Court staff are responsible for monitoring the new 90-day deadline (coded in CM/ECF as “releasetn”). At the end of the 90-day restriction period, court staff in accordance with these guidelines will be able to remove the access restriction via the “Access to Document” window within the “Review/Remove Transcript Access Restriction” utility.
7. During the 90-day restriction period, the transcript and any redacted versions will not be available via remote electronic access. An attorney who purchases the transcript during the 90-day period will be given remote electronic access to the transcript and any redacted version filed. Members of the general public including *pro se* parties (unless the court allows *pro se* parties to have a CM/ECF e-filing account) who purchase the transcript will not be given remote electronic access to the transcript or any redacted version filed during the 90-day period.

II. DETAIL OF THE PROCESS IN CM/ECF

A. **How Transcript is Filed.** Each court will determine how transcripts will be filed:

— a court may provide the transcriber with a CM/ECF account that will allow the

⁵ It is important to note that the *viewing only* header remains on the transcript viewed at the public terminal even after the 90-day restriction period. Since this may be confusing to the customer, court staff should explain that the 90-day period restricting access to *viewing only* has expired. If a redacted transcript is filed, court staff may want to suggest that the customer purchase a printout of the *redacted* version instead for a “cleaner” copy.

⁶ When a redacted transcript is filed, the court may choose to order – via local rule or general order – permanent restriction of the unredacted version; the alternative, of course, is that parties will file on a case-by-case basis appropriate motions pursuant to Fed. R. Bankr. P. 9037(e).

transcriber to electronically file the transcript,
or
— the court may require the transcriber to submit the electronic file of the transcript to the clerk's office for docketing by the clerk's office.

B. Notice of Transcript Filed – Via Docket Text (“NEF”) or Via Separate Paper Notice. The CM/ECF release 3.2 starter dictionary includes two versions of the transcript event for courts to choose from – the “long text” version and the “short text” version. The choice between the two events rests on the court's decision whether to (1) rely on docket text in lieu of a separate notice when all persons who attended the hearing are CM/ECF participants ("long text") or (2) issue a notice in lieu of relying on docket text alone ("short text").

In each version, the docket text of the transcript event not only describes the transcript, but also provides information as to how to contact the reporter or transcriber.⁷

The “long text” version includes the deadlines for filing documents related to redaction of the transcript (see C. 4. of the “Snapshot of Process” of these guidelines). Use of the long text event allows the court to let the text of the entry serve as the “Notice of Filing of Transcript and of Deadlines Related to Restriction and Redaction” – in lieu of a separate paper notice. The NEF produced when the transcript is docketed serves as notice to attorney CM/ECF participants in the case. If there are non-CM/ECF participants in the case who attended the hearing, the court may want to docket a separate “Notice of Filing of Transcript and of Deadlines Related to Restriction and Redaction” event which can be designed to produce a form notice.⁸

Example of *long text* docket entry:

Transcript regarding hearing held 1/31/08. Remote electronic access to the transcript is restricted until (transcript release date). The transcript may be viewed at the Bankruptcy Court Clerk's Office. [For information about how to contact the transcriber, call the Clerk's Office] or [Contact (transcriber name and telephone)]. (RE: related document(s) [5] Hearing

⁷See page 2 of James Duff's memorandum dated May 15, 2007, “Revised Transcript Redaction Procedures” at http://jnet.ao.dcn/Memos/2007_Archive/Dir7058.html.

⁸Because the deadline for filing a notice of intent to request redaction is 7 calendar days, courts may wish to produce and mail the notice locally to save the BNC's two days' processing time. Courts can program the transcript event to create a paper notice. If the event is docketed by the transcriber, the notice will be placed in the holding queue, and court staff will need to release (send) the notice.

(bk motion) set).⁹ *Deadline to file Notice of Intent to Require Redaction is 01/22/2008. Deadline to file Request for Redaction is 02/06/2008. Redacted transcript due by 02/19/2008. (Stevens, Kate).*

The “short text” version does not include deadlines for filing documents related to redaction of the transcript. Use of the short text event requires the court to send a separate “Notice of Filing of Transcript and of Deadlines Related to Restriction and Redaction” to all attorneys and *pro se* parties who attended the hearing in order to give notice of the *deadlines related to redaction*.

The short text version is applicable for those courts who choose to send a paper “Notice of Filing of Transcript and of Deadlines Related to Restriction and Redaction” to appropriate recipients, regardless of the recipient’s access to CM/ECF or PACER.

Example of the *short text* docket entry:

Transcript regarding hearing held 1/31/08. Remote electronic access to the transcript is restricted until (transcript release date). [For additional information, call the Clerk’s Office] or [Contact (transcriber name and telephone)]. (RE: related document(s) [5] Hearing (bk motion) set). (Stevens, Kate).

Courts may choose any combination of options discussed here to accomplish providing notice of the filing of the transcript and of deadlines related to restriction and redaction.

C. Granting Remote Electronic Access to Transcript During Restriction Period.

Once an attorney purchases a transcript, court staff will give the attorney remote electronic access to it. In courts where attorneys purchase transcripts from the transcriber, the court will need a procedure for the transcriber to notify the court of the purchase. Only court staff have authority to grant remote electronic access to a transcript; each court must decide which court staff will have this authority.

Court staff will grant remote electronic access (lift the restriction) in CM/ECF release 3.2 via the “Access to Document” window within the “Review/Remove Transcript Access Restriction” utility. Each time the court grants or removes access privileges for an individual or group, this is logged by CM/ECF; the court can review this log by clicking on the “History” button in the “Access to Document” window. Availability of the history log eliminates the need for courts to docket an event to document or record transcript access changes. The CM/ECF 3.2 Release Notes include a detailed description

⁹ Each court determines to which event the transcript will link: either the underlying matter heard, e.g., the motion, or the minutes/hearing held-proceeding memo, or both, according to court practice.

of this function.

D. Notice of Intent to Request Redaction. Within seven (7) calendar days of the filing of the transcript, any person who wishes to redact from a transcript those personal identifiers noted in Fed. R. Bankr. P. 9037(a) must file a “Notice of Intent to Request Redaction” with the clerk and serve a copy of the notice on the transcriber. CM/ECF release 3.2 includes the e-mail DPF which allows filers to send an alert to a filing via e-mail to persons who are not CM/ECF participants in a case; courts may wish to include this DPF in the notice event.

E. Request for Redaction under Rule 9037(a). After filing a notice of intent to request redaction, the filer has 21 calendar days from the date of filing of the transcript to file a Request for Redaction with a listing indicating where the personal data identifiers to be redacted appear in the transcript. The filer of the request for redaction must serve the request on the transcriber.

To identify parts to be redacted, the attorney or *pro se* party filing a Request for Redaction must attach a list of information to be redacted with the request. The information should be identified by type of identifier (e.g., minor’s name, birthdate, etc.) and page and line number where the information appears in the transcript. This specificity will reduce errors.

F. Request for Redaction under Rule 9037(d). If a person wishes to redact information not covered in Fed. R. Bankr. P. 9037(a), he or she must file a Motion for Protective Order pursuant to part (d) of the Rule.

G. Effect of Motions to Extend Time to file documents or Motion for Protective Order. A transcript will not be electronically available until the court has ruled on intervening motions for extension of time or for protective orders related to the transcript. Generally, such motions will be handled expeditiously by the court in light of the 90-day restriction period and the need for access to the transcript for appellate proceedings.

H. Filing the Redacted Transcript. Once a request for redaction is filed, the transcriber has 31 calendar days from the date of the filing of the transcript to file a redacted version of the transcript.

I. Lifting the Restriction at the End of the 90-day Restriction Period. At the end of the 90-day restriction period, if there are no redaction documents or motions linked to the transcript, the court may remove the access restriction via the “Access to Document” window within the “Review/Remove Transcript Access Restriction” utility.

III. GENERAL ISSUES

The following discussion of general issues may answer some of your implementation questions.

A. **Policy.** This policy applies to transcripts of federal court proceedings made available remotely via CM/ECF and PACER.

Nothing in this policy changes any rules or policies with respect to sealing or redaction of court records for any other purpose. Note, however, that Fed. R. Bankr. P. 9037 has provisions for redaction of information beyond that prescribed by the Judiciary's privacy policy and for restriction of a nonparty's electronic access.

Under this policy, any party (or any other person or entity) may order production of a transcript on an expedited basis.

B. **Extension of Deadlines.** The deadlines described in the Snapshot section above are included in the CM/ECF dictionary events that accompany Release 3.2. Extension of deadlines may delay appellate proceedings where redaction procedures extend beyond 31 days. Courts may wish to effectively lengthen notice to the parties of a possible forthcoming need to review a transcript for redaction by modifying their transcript ordering procedures to require either the transcriber or the ordering attorney to give notice to the other parties in the case that a transcript has been ordered.

C. **Remote Access and PACER Charges.** Charges for access through PACER apply during and after the 90-day restriction period. Charges are not capped at 30 pages. The user will incur PACER charges each time the transcript is accessed even though he or she may have purchased it from the transcriber and obtained remote access through CM/ECF. **A free copy of the electronic transcript is not available via remote access.** After purchasing the transcript from the transcriber, an attorney can receive the original and any redacted transcript in both paper and electronic format.

D. **Access for Appellate Judges and Attorneys.** An appellate judge will be able to access the transcript remotely if the judge has a CM/ECF account in the bankruptcy court where the transcript is docketed and has been granted access to the transcript. Appellate court staff should contact the bankruptcy court's Information Technology Department to ensure that the judge is "registered" in the bankruptcy court and has access to the transcript. As with other attorneys, an appellate case attorney who purchases the transcript during the 90-day restriction period will be given remote electronic access to the transcript once the transcriber informs the court. If the appellate attorney needs a CM/ECF account in the bankruptcy court where the transcript is docketed, he may register for one. The appellate attorney will *not* be added to the case record.

E. **Access to Unredacted and Redacted Transcripts After Purchase by Attorney.** During the 90-day restriction period, when an attorney purchases the unredacted transcript, court staff will grant that attorney remote electronic access to the unredacted transcript as well as to any *redacted* version. If an attorney only purchases a redacted version of a transcript, the attorney should not be given remote electronic access to the unredacted transcript in CM/ECF.

Courts may want to warn practitioners that the PACER fee will be charged even if they have purchased the transcript and that the 30-page cap does not apply to viewing or printing a transcript via PACER.¹⁰

F. Access to Transcript After Purchase by Non-attorneys. Members of the public, including the news media, who purchase a transcript from the transcriber are never granted remote electronic access to a restricted transcript. The court in its discretion, however, may grant remote electronic access to *pro se* parties who attended the hearing.

G. Certification of Transcripts. Signatures on transcripts, and the certifications implied by a transcriber's signature, are likely addressed by local rule or administrative procedure requirements, e.g.: *Signature of Filer*

Use of the login name and password required to submit documents electronically constitutes the filer's signature for purposes of Fed. R. Bankr. P. 9011. Filers should enter "s/submitted electronically" or a similar notation on their signature line so that when the document is printed out, there will be a clear indication that the document was submitted electronically.

H. Responsibility for Reviewing Filed Transcript and Scope of Review. Once a transcript is filed, it is the responsibility of attorneys and *pro se* parties who attended the hearing to review the transcript for redaction. The scope of an attorney's or *pro se* party's responsibility includes review of the following portions of a transcript¹¹:

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

If only part of the transcript is filed, an attorney or *pro se* party is not responsible for reviewing other parts of the proceeding.

¹⁰ See Electronic Public Access Fee Schedule. Go to <http://pacer.psc.uscourts.gov> and click on EPA Fee Schedule Update.

¹¹ See James Duff's memorandum dated May 2, 2008, "Revised Version of Judicial Conference Privacy Policy" at http://jnet.ao.dcn/Memos/2008_Archive/Dir8061.html.

Sample Notice of Filing

UNITED STATES BANKRUPTCY COURT
DISTRICT OF _____

In re

_____,

Debtor.

Case No. _____

(if applicable:

_____,

Plaintiff,

v.

Adversary Proceeding No. _____

_____,

Defendant.)

NOTICE OF FILING OF TRANSCRIPT
AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION

A transcript of the proceeding held on _____ was filed on _____. The following deadlines apply:

The parties have [until (calculated date)] [seven (7) calendar days from the date of filing of the transcript] to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is [(calculated date)] [21 days from the date of filing of the transcript].

If a request for redaction is filed, the redacted transcript is due [(calculated date)] [31 days from the date of filing of the transcript].

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is [(calculated date)] [90 calendar days from the date of filing of the transcript] unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber (name, address/contact information) or you may view the document at the clerk's office public terminal.

Deputy Clerk

Date: _____

CM/ECF Release 3.2 Transcript Redaction/Restriction Process Flow (May 2008)

