



**UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA**

**Implementation of Judicial Conference Transcript Policy and
Version 3.2.1 of CM/ECF
Attorneys and Staff**

Background

At its September 2007 session, the Judicial Conference approved a new policy regarding the availability of transcripts of court proceedings.¹ CM/ECF Release 3.2 includes software that facilitates the implementation of this policy. The Judicial Conference Committee on Court Administration and Case Management has set a date of May 15, 2008, for courts to comply with the Judicial Conference policy on transcripts and Release 3.2 includes the software changes needed to implement this policy.

The language from the Judicial Conference's September 2007 session (JCUS - SEP 07) 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.
- (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 download from the court's CM/ECF system through the judiciary's PACER system.

¹The special redaction procedures for transcripts and the 90-day restriction policy apply only to transcripts of federal courtroom proceedings. Other transcripts, such as those of depositions taken outside of court, or of proceedings of state courts or other jurisdictions, may be filed by the parties, and would be subject to the rules and redaction requirements applicable to other filings by parties.

In addition, amendments to the Federal Civil and Criminal Rules of Procedure implementing the E-Government Act of 2002's requirement to protect the privacy and security of publicly available electronic filings took effect on December 1, 2007. The amendments to the Civil Rule 5.2 and Criminal Rule 49.1 require that personal identification information be redacted from documents filed with the court – individuals' Social Security number, names of minor children, financial account numbers, dates of birth, and, in criminal cases, home addresses.

Under 28 U.S.C. § 753(b), the court reporter or transcriber must deliver promptly a certified copy of any transcript made to the clerk of court for the records of the court. A Notice of Filing of Official Transcript will be filed and sent via NEF or traditional means for non-ECF users each time a transcript of a court proceeding is filed. The Notice of Filing of Official Transcript will inform parties and attorneys of record of the 90-day restriction, how to obtain the transcript during the restriction period, and additional information regarding applicable deadlines and responsibilities of attorneys. The date when the transcript is filed in CM/ECF is the starting point for all deadlines related to the transcript.

During the 90-day period (which may be extended by court order), access to the transcript in CM/ECF is restricted to four types of users:

- court staff;
- public terminal users;
- attorneys of record or parties who have purchased the transcript from the court reporter/transcriber; and
- other persons as directed by the court, e.g., appellate attorneys.

During the 90-day period, the transcript will include a header “AVAILABLE AT THE PUBLIC TERMINAL FOR VIEWING ONLY” alerting court staff that they may not copy or print the transcript for a requester during the restriction period.

New Obligations and Requirements for Attorneys

- Redaction responsibilities apply to attorneys even if the requestor of the transcript is a judge or a member of the public/media.
- Any party who needs to review the transcript for redaction purposes may purchase a copy from the court reporter/transcriber or view the transcript at the courthouse using the CM/ECF public terminal. If a party purchases the transcript from the court reporter, and he or she is an attorney in the case, he or she will be given remote access to the transcript via CM/ECF and PACER. PACER fees apply at all times when accessing transcripts remotely.
- Unless otherwise ordered by the court, the attorney must review the following portions of the transcript:
 - opening and closing statements made on the party's behalf;
 - statements of the party;
 - the testimony of any witness called by the party
 - sentencing proceedings; and

- any other portion of the transcript as ordered by the court.
- Only those identifiers listed in the rules can be redacted through this part of the process: Social Security numbers; financial account numbers; names of minor children; dates of birth; and, in criminal cases, home addresses of individuals.
- An attorney serving as “standby” counsel appointed to assist a pro se defendant in his or her defense in a criminal case must review the same portions of the transcript as if the pro se defendant were his or her client.
- If the transcript relates to a CJA panel attorney representation, including serving as standby counsel, the attorney conducting the review is entitled to compensation under the CJA for functions reasonably performed to fulfill the redaction obligation and for reimbursement for related reasonable expenses.
- If an attorney wishes to redact additional information, he or she must make a motion to the court.

Overview of Process in CM/ECF

Immediately before a transcript is filed in ECF, the official court reporter will file a Notice of Filing of Transcript. This Notice will inform counsel of their new responsibilities. A sample Notice of Filing of Transcript is attached.

Upon the filing of an official transcript by the court reporters, two deadlines are created, which require action by attorneys:

- Within seven (7) days of filing of the original transcript, the attorney must file a Notice of Intent to Request Redaction to notify the court reporter if they intend to request the redaction of personal identifiers as outlined in Federal Rules of Criminal Procedure 49.1 and Federal Rules of Civil Procedure 5.2. A new event code, Notice of Intent to Request Redaction, is available to attorneys to use if they intend to request redaction.

CM/ECF Filing Instructions: Under either Civil or Criminal Events, select “Other Documents” from the “Other Filings” category. Select “Notice of Intent to Request Redaction,” enter the case number, select the pdf document, select the attorney, select the filer, and select the original transcript to be redacted.

- Within twenty-one (21) days of filing the official transcript, the attorney must file a Redaction Request outlining the page and line number of each item to be redacted.
For Example: page 3, Line 14, redact Social Security Number.

CM/ECF Filing Instructions: Under either Civil or Criminal Events, select “Other Documents” from the “Other Filings” category. Select “Redaction Request – Transcript,” enter the case number, select the pdf document, select the attorney, select the party, and select the original transcript to be redacted.

The court reporter has thirty-one (31) days from the filing of the original transcript to make the necessary redactions and file the redacted transcript. After ninety (90) days, the transcript (redacted or original) is made available for inspection and printing from PACER and at the clerk's office public terminal (for \$0.10 per page). The transcript is exempt from the \$2.40 maximum per document price through PACER.