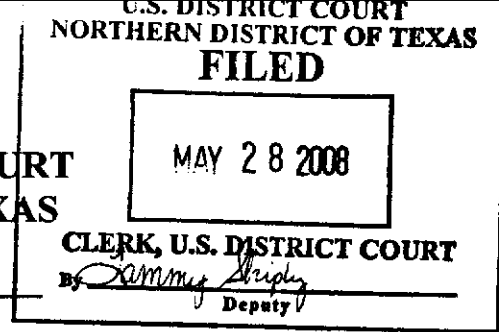


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS



MISCELLANEOUS ORDER NO. 61

This order supersedes all previous orders designated as "Miscellaneous Order No. 61."

I. Public Access; Attorney Responsibility to Redact

The Judicial Conference of the United States has adopted a policy regarding the electronic availability of transcripts of court proceedings. *See* Attachment 1. Under the policy, transcripts are now available electronically to anyone holding a login and password to the judiciary's public access to electronic records system ("PACER") and to anyone using a public terminal in the clerk's office. Therefore, attorneys must take specific steps to keep personal data identifiers out of transcripts.

To implement the Judicial Conference policy, this court has adopted the following procedures that apply to all transcripts filed on or after May 28, 2008.

- A. Once a transcript has been ordered by an attorney and produced by a court reporter, the court reporter will electronically file the transcript with the clerk's office, and the clerk's office will notify all attorneys in the case of the filing.
- B. An electronically filed transcript will immediately be available for viewing at public terminals in the clerk's office. The transcript cannot be copied or reproduced in the clerk's office until 90 calendar days have elapsed from the date of filing.
- C. Each attorney in the case must review the electronically filed transcript and determine if any personal data identifier listed in the Judicial Conference policy is included in the transcript. An attorney is generally only responsible for reviewing and indicating redactions in the testimony of the witnesses called on behalf of the party represented

by the attorney and in the opening statement and closing argument made on behalf of the party; however, both the attorney for the government and attorney for the defendant must review the entire transcript of a sentencing proceeding.

- D. If an attorney determines that a transcript contains a Social Security number, taxpayer identification number, birth date, the name of an individual known to be a minor, financial account number, or (in a criminal case) a home address, the attorney must file a "Redaction Request" with the clerk's office on the approved form. *See* Attachment 2. This form must be filed within 21 calendar days of the date the transcript was filed. If the attorney wants information other than these personal identifiers to be redacted from a transcript, the attorney must file a motion seeking this relief from the court.
- E. A court reporter must redact each personal data identifier, as requested by an attorney, and must electronically file a redacted transcript within 31 calendar days after the filing of the transcript.
- F. Restrictions on an electronically filed transcript, or a redacted version of the transcript if a redaction request was filed, will be removed 90 calendar days after the filing of the transcript unless a redaction request is still pending or the presiding judge otherwise directs. The transcript will then be available remotely to view, download, or print from PACER or CM/ECF, or to obtain from the clerk's office.

II. Delegation of Authority to Clerk to Refund an Erroneous Electronically Paid Fee and to Forgo Collection of Fee for an Erroneous Filing

The court delegates to the clerk the authority to refund a fee paid by an ECF user who has used ECF to pay a fee by credit card and the fee was paid erroneously because the payment was:

- A. a duplicate fee payment related to the submission of a single document (including a single document erroneously submitted two or more times); or
- B. a fee payment when no fee was due (e.g., when no document was attached to a submission, or the submission did not require payment of a fee).

To obtain a refund, an ECF user must make a written request to the clerk. Any refund issued by the clerk to an ECF user must be processed through the court's electronic credit card system.

If an ECF user continues (or ECF users from the same law firm continue) to make repeated mistakes when submitting fees electronically, the court may consider remedial action, such as issuing an order to show cause why further requests for refunds should be considered.

III. Administrative Procedures

The clerk is authorized to establish administrative procedures regarding access and use of the ECF system.

SO ORDERED.

May 28, 2008.



SIDNEY A. FITZWATER
CHIEF JUDGE

Judicial Conference Policy on Privacy and Public Access to Electronic Case Files
March 2008

Amendments to the Appellate, Bankruptcy, Civil, and Criminal Rules to implement the requirements of the E-Government Act of 2002 took effect on December 1, 2007. The new rules codify, to a large extent, the 2001 Judicial Conference privacy policy, as revised in 2003, requiring redaction of personal identifier information from filings.¹ The personal identifiers to be redacted are Social Security numbers, names of minor children, financial account numbers, dates of birth, and, in criminal cases, home addresses.²

Because of the enactment of the rules, the previous policy is no longer operative except for two portions of the earlier privacy policy that remain in force, separate from the new rules. They are listed below.

I. Documents in criminal case files for which public access should not be provided

The following documents in a criminal case shall not be included in the public case file and should not be made available to the public at the courthouse or via remote electronic access:

- unexecuted summonses or warrants of any kind (e.g., search warrants, arrest warrants);
- pretrial bail or presentence investigation reports;
- statements of reasons in the judgment of conviction;
- juvenile records;
- documents containing identifying information about jurors or potential jurors;
- financial affidavits filed in seeking representation pursuant to the Criminal Justice Act;
- ex parte requests for authorization of investigative, expert or other services pursuant to the Criminal Justice Act; and
- sealed documents (e.g., motions for downward departure for substantial assistance, plea agreements indicating cooperation or victim statements).

II. The redaction of electronic transcripts of court proceedings

Courts making electronic documents remotely available to the public shall make electronic transcripts of proceedings remotely available to the public if such transcripts are prepared. Prior to being made electronically available from a remote location, however, the transcripts must conform to Fed. R. Civ. P. 5.2(a), Fed. R. Crim. P. 49.1(a), or Fed. R. Bankr. P. 9037(a).

¹ JCUS-SEP/OCT 01, pp. 48-50 and JCUS-SEP 03, pp. 15-16.

² Fed. R. App. P. 25(a), Fed. R. Bankr. P. 9037, Fed. R. Civ. P. 5.2, and Fed. R. Crim. P. 49.1.

Once a prepared transcript is delivered to the clerk's office pursuant to 28 U.S.C. § 753, the attorneys in the case are (or, where there is a self-represented party, the party is) responsible for reviewing it for the personal data identifiers required by the federal rules to be redacted, and providing the court reporter or transcriber with a statement of the redactions to be made to comply with the rules. Unless otherwise ordered by the court, the attorney must review the following portions of the transcript:

- (a) opening and closing statements made on the party's behalf;
- (b) statements of the party;
- (c) the testimony of any witnesses called by the party;
- (d) sentencing proceedings; and
- (e) any other portion of the transcript as ordered by the court.

Within seven calendar days of the delivery by the court reporter or transcriber of the official transcript to the clerk's office, each attorney must inform the court, by filing a notice of redaction with the clerk, of his or her intent to direct the redaction of personal data identifiers from the electronic transcript of the court proceeding. 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.

An attorney serving as "standby" counsel appointed to be available 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 panel attorney representation pursuant to the Criminal Justice Act (CJA), 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.

A party is to submit to the court reporter or transcriber, within 21 calendar days of the transcript's delivery to the clerk, or longer if a court so orders, a statement indicating where the personal data identifiers to be redacted appear in the transcript. The court reporter or transcriber must redact the identifiers as directed by the party.

These procedures are limited to the redaction of the specific personal data identifiers listed in the rules. During the 21-day period, or longer if the court so orders, an attorney may move the court for additional redactions to the transcript. The transcript shall not be made available on the internet until the court has ruled upon any such motion.

The court reporter or transcriber must, within 31 calendar days of the delivery of the transcript to the clerk of court, or longer if the court so orders, perform the requested redactions, and file a redacted version of the transcript with the clerk of court. The original unredacted electronic transcript should be retained by the clerk of court.

Policy Note

This policy applies to 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 or transcriber, pursuant to Judicial Conference policy, to promptly deliver to the clerk of court the court reporter's or transcriber's original records of a proceeding or the inclusion of a transcript with the records of the court.

If a party desires to respond to a motion for additional redaction, the court may establish a briefing schedule.

Nothing in this policy creates a private right of action.

Nothing in this policy changes any rules or policies with respect to sealing or redaction of court records for any other purpose.

This policy does not affect or limit the right of any party (or any other person or entity) to order production of a transcript on an expedited basis. This policy does not affect any court rules or ruling requiring the sealing of materials or the protection of sealed materials.

An attorney appointed pursuant to the Criminal Justice Act (CJA) is entitled to compensation under the CJA for functions performed to fulfill his or her obligations under the policy, including the following: (1) traveling to gain access to the transcript, if needed; (2) reviewing a transcript to determine whether to file notice of intent to redact; (3) filing a notice of intent to redact or a motion for an extension of time; (4) reviewing a transcript to determine the location of information to be requested to be redacted or whether to file a motion for additional redaction; (5) preparing and filing a redaction request or motion; and (6) other actions (including creating pleadings, attending hearings or other follow-up). The attorney is also entitled to reimbursement under the CJA for the costs of obtaining a transcript for purposes of review. If a case involving a CJA representation has already been closed and the original attorney is no longer available, or if 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.

Extensions of time to comply with the deadlines set forth in these procedures should not be routinely granted, due to the potential for delay of court of appeals proceedings in the event redaction procedures extend beyond 31 days.

The undersigned understands that redaction of information other than personal identifiers listed below requires an order of the court.

Social Security or taxpayer-identification number to the last four digits

Date of birth to the year

Name of an individual known to be a minor to the initials

Financial account number to the last four digits

Home address to the city and state (in a criminal case)

Date: _____

s/ Typed Name or Graphical Signature of Attorney

Bar Number: _____

Address: _____

Telephone: _____

Fax: _____

E-mail: _____

CERTIFICATE OF SERVICE

I hereby certify that on (Date) , I electronically filed the foregoing with the clerk of court for the U.S. District Court, Northern District of Texas, using the CM/ECF system which will send notification to case participants registered for electronic notice. I further certify that I have served all case participants not registered for electronic notice by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

s/ Typed Name or Graphical Signature of Attorney

NOTE: To electronically file this document, you will find the event in our Case Management (CM/ECF) system, under Civil or Criminal/Other Filings/Other Documents/Redaction Request - Transcript.