

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN

IN RE:

Order Regarding the Policy and Procedures for
Redacted Information in Transcripts

Admin. No. 08-20

In December 2002, the E-Government Act of 2002, Pub. L. No. 107-347, was adopted to protect the privacy and security of publicly available electronic filings. Section 205(c)(3) specified that if federal rules relating to the electronic filing of documents provided for the redaction of certain personal data identifiers, they also had to allow a party wishing to file a document containing such information to file an unredacted copy of the document under seal, which the court must retain as part of the record.

At its September 2007 session, the Judicial Conference adopted a policy regarding electronic availability of transcripts of court proceedings. 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.

Rule 9037(a) of the Federal Rules of Bankruptcy Procedure, which was 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.

This policy applies to transcripts made available remotely via CM/ECF and PACER. The redaction procedures for transcripts, as well as the 91-day restriction policy, apply only to transcripts of federal courtroom proceedings. **This policy and procedures are effective as of October 6, 2008.**

Procedures

1. A party will electronically file a request for a transcript of a court proceeding. Chambers staff will forward the transcript request to a court reporter/transcriber to complete. A revised transcript request form can be found on the court's web site.
2. The transcriber files an electronic transcript of the court proceedings with the clerk's office through CM/ECF. An email notification is automatically sent to chambers staff of the transcript filing.

The CM/ECF docket event for the transcript automatically restricts access to the electronic transcript to court staff only for 91 days.

The Notice of Electronic Filing (NEF) of the transcript event informs parties and attorneys of record that:

- (a) A transcript has been filed;
 - (b) A 91-day restriction period is in effect;
 - (c) Specific deadlines are associated with redaction; and
 - (d) Procedures must be followed for obtaining the transcript during the restriction period.
3. If any party participated in the proceeding and does not receive electronic notice, chambers staff will file and mail to the party a Notice of Filing of Official Transcript and of Deadlines Related to Restriction and Redaction.
 4. The attorneys or pro se parties who attended the court proceeding are responsible for reviewing the transcript for the personal data identifiers required by the federal rules to be redacted. Unless otherwise ordered by the court, the parties 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; and
 - (d) any other portion of the transcript as ordered by the court.

Any party needing to review the transcript for redaction purposes may purchase a copy from the transcriber. If an attorney purchases the transcript from the transcriber, the clerk's office will provide the attorney remote access to the transcript as well as to any redacted transcript via CM/ECF and PACER. Pro se parties may view the transcript at the clerk's office.

5. If redaction is not necessary, no further action needs to be taken. Public access to the electronic transcript will be **91 days** from the date of filing of the transcript if no motions to extend time or for a protective order are filed.
6. If redaction of information is necessary, parties have **21 days** from the date of filing of the electronic transcript to file with the court a **Transcript Redaction Request** pursuant to Fed. R. Bankr. P. 9037(a). **The redaction request shall list the information to be redacted by page and line number.**

Parties shall also serve the transcriber with the Transcript Redaction Request. The transcriber will also automatically receive email notification that this request has been filed with the court.

If a party fails to file the Transcript Redaction Request by the deadline set by the Court, it will be deemed the party has waived his/her right to request redaction and the Court will enter an order denying any untimely request.

7. The transcriber has **28 days** from the date of filing of the electronic transcript to file with the court an electronic **Redacted Transcript**. The transcriber is not authorized to sell a copy of an unredacted transcript to the public if a redacted version is filed with the Court.
8. If a redacted transcript is filed, the **redacted version** will be available to the public for viewing and printing at the public terminal in the clerk's office and available for download from CM/ECF through PACER for a fee, 91 days from the date of filing of the original electronic transcript. The **unredacted version** of the transcript will NOT be available to the public and will be retained by the clerk of the court as a restricted document.
9. **Remote Access and PACER Charges.** Charges for access through PACER apply during and after the 91-day restriction period. Charges are not capped at 30 pages. The user will incur PACER charges each time the transcript is accessed even though the party 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.** If an attorney only purchases a redacted version of the transcript, the attorney will not be given remote electronic access to the unredacted transcript in CM/ECF.
10. **Extension of Deadlines.** If a party wishes to request an extension of a deadline, the party may file a motion to extend time pursuant to Fed. R. Bankr. P. 9037(d). The transcript will not be electronically available until the court has ruled on any such motion, even though the 91-day restriction period may have ended. These motions will be handled by the court expeditiously given the 91-day restriction period as well as the need for access to the transcript by the attorneys and parties.

11. **Redaction of Additional Information.** If an attorney wishes to redact additional information other than the specific personal data identifiers listed in the rules, the attorney may file a motion for a protective order pursuant to Fed. R. Bankr. P. 9037(d). The transcript will not be electronically available until the court has ruled on any such motion, even though the 91-day restriction period may have ended. These motions will be handled by the court expeditiously given the 91-day restriction period as well as the need for access to the transcript by the attorneys and parties.

October 1, 2008

/s/ Steven Rhodes
Steven Rhodes
Chief Bankruptcy Judge