UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

PROMULGATION OF STANDING ORDER NO. 09-3 IMPLEMENTING A NEW POLICY ON ELECTRONIC AVAILABILITY AND REDACTION OF TRANSCRIPTS AND REVISION TO LOCAL BANKRUPTCY RULE 5007-1 AND RE-DESIGNATION AS LOCAL BANKRUPTCY RULE 5077-1

AMENDED PUBLIC NOTICE

Standing Order No. 09-3 takes effect March 16, 2009.

At its September 2007 session, the Judicial Conference of the United States adopted a policy regarding electronic availability of transcripts of court proceedings. The Judicial Conference previously had approved procedures to implement the Judiciary's privacy policy for the redaction of personal data identifiers from public records that are electronically available to the public, which now is reflected in Federal Rule of Bankruptcy Procedure 9037, as it applies to electronic availability of transcripts.

The Court has modified its procedures to conform to changes made to the Judicial Conference policy as that policy and modified procedures that is supported by Bankruptcy CM/ECF Release 3.2, which is part of a multi-release upgrade of the Court's CM/ECF System. This CM/ECF System upgrade from Bankruptcy CM/ECF Release 3.1.7 through Release 3.2 to Release 3.3.1 was completed over the weekend of March 14-15, 2009.

Information regarding Transcripts when utilizing Bankruptcy CM/ECF Release 3.2 is located on the Court's CM/ECF Home Page at the Users' Guide button and can be accessed by left clicking the Release 3.2 CM/ECF Bankruptcy Learning Modules link located on that page at http://www.vaeb.uscourts.gov/ecfguides/3.2learningmodules/3.2LearningModules.html.

Amendments are made to Local Bankruptcy Rule 5007-1 and the rule is re-designated Local Bankruptcy Rule 5077-1. The new clause at the beginning of paragraph (B) to Local Rule 5077-1 inadvertently was not underlined (to reflect new text) in the attachment to the March 3, 2009, public notice and is underlined in the revised attachment to this amended Public Notice. The text has been placed with the Local Bankruptcy Rule in the current Local Bankruptcy Rules link on the Court's Internet Local Rules page at http://www.vaeb.uscourts.gov/home/localrules.html.

Date: March 16, 2009   William C. Redden
                 Clerk of Court

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

In re   )
)
Redaction of Transcripts and   )
Revision to Local Bankruptcy   )   Standing Order No. 09-3
Rule   )

ORDER IMPLEMENTING POLICY ON ELECTRONIC AVAILABILITY AND
REDACTION OF TRANSCRIPTS AND REVISION TO LOCAL BANKRUPTCY RULE
5007-1

       At its September 2007 session, the Judicial Conference of the United States adopted a
policy regarding electronic availability of transcripts of court proceedings. The Judicial
Conference previously had approved procedures to implement the Judiciary's privacy policy
for the redaction of personal data identifiers from public records that are electronically
available to the public, which now is reflected in Federal Rule of Bankruptcy Procedure 9037,
as it applies to electronic availability of transcripts.

NOW, THEREFORE, IT IS ORDERED that:

The following procedures regarding the availability and redaction of transcripts of court
proceedings made available through the public access terminals located at each division of the
Court in the Intake area of the Bankruptcy Clerk's Office and remotely via CM/ECF and
PACER are hereby adopted:

   1. Each party[1] shall review a transcript of a court proceeding for information that should
       be redacted under the Judicial Conference's privacy policy and as more specifically set
       forth at Federal Rule of Bankruptcy Procedure 9037(a):

       a. the last four digits of the social security number and taxpayer identification number;
       b. the year of the individual's birth;
       c. the minor's initials; and
       d. the last four digits of the financial account number.

   2. Although normally it is the duty of the filer of a pleading or paper to redact personal
       data identifiers, the redaction responsibilities for a transcript fall on the parties to the
       hearing, not the court reporter (or transcriber) or the Bankruptcy Clerk's Office.

   3. The Clerk of Court shall establish procedures for: the filing of original transcripts and
       re-filing of redacted transcripts by a court reporter or transcriber; providing notice of a
       filed transcript including deadlines related to restriction and redaction; and providing
       access to transcripts remotely by appellate judges and appellate case attorneys.

   4. No later than seven calendar days after a transcript is filed, a party must file a Notice of
       Intent to Request Redaction with the Court, and serve a copy on the court reporter or
       transcriber, if the party intends to request redaction of personal data identifiers from the
       transcript. A party is responsible for reviewing the opening and closing statements

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[1] In the case of a represented party, the party's attorney shall perform the redaction duties performed by
parties under this Standing Order.

made on the party's behalf; statements of the party; the testimony of any witness called by the party; and other portion of the transcript as ordered by the Court.[2] A party is not responsible for reviewing other parts of the proceeding if only part of the transcript is filed. If no Notice of Intent to Request Redaction is filed during the seven calendar-day period, the Court will deem that redaction of personal data is not necessary, and will make the transcript available to the public as set forth below.

5. No later than 21 calendar days after the transcript is filed, the party filing a Notice of Intent to Request Redaction must serve such a request on the court reporter or transcriber. The request must include an attached list of items to be redacted including the transcript page, paragraph and line in which each listed personal data identifier, by identifier type, appears and the manner in which each is to be redacted. For good cause shown, the Court may order this time extended.

6. No later than 31 calendar days after the original transcript is filed, the court reporter or transcriber must redact the personal data identifiers as directed, and re-file the redacted transcript. During the 21-calendar-day period set forth at paragraph 5, a party, by Motion for Protective Order pursuant to Federal Rule of Bankruptcy Procedure 9037(d), may request that additional personal data identifiers be redacted. No remote electronic public access to the transcript through the Court's CM/ECF system will be allowed (other than to an attorney who paid for the original transcript) until the Court has ruled on any motion regarding its redaction, all redaction deadlines have expired and all redaction has occurred.

7. A transcript provided to the Court by a court reporter or transcriber will be available in the Bankruptcy Clerk's Office for viewing only, for a period of 90 days after it is delivered to the Clerk of Court. During this 90-day period, a transcript may be viewed (but not printed) in the CM/ECF system at a public access terminal located in the Bankruptcy Clerk's Office, or may be purchased from the court reporter or transcriber at the rate established by the Judicial Conference. 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. The Bankruptcy Clerk's Office, however, will not provide copies to attorneys, any parties to the court proceeding or to the public. The transcript will be available within the Court for internal use.

8. Charges for access through PACER apply during and after the 90-day restriction period. Charges are not capped at 30 pages. A PACER account holder will incur PACER charges each time the transcript is accessed even though the account holder may have purchased it from the court reporter or transcriber and obtained remote access through CM/ECF. A free copy of the electronic transcript is not available via remote access. After purchasing the original transcript from the court reporter or transcriber, an attorney can receive the original and any redacted transcript in both paper and electronic form. If, however, an attorney only purchases a redacted version of a transcript, the attorney will not be given remote electronic access to the unredacted transcript in CM/ECF. The public, including the media and unrepresented parties who purchase the transcript, will not be given remote electronic access to the transcript or any redacted version filed during the 90-day period.

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[2] Regarding courtroom proceedings to which the record is taken by digital audio recording, parties, attorneys and witnesses should refrain from using personal identifiers in statements or testimony during court proceedings. Personal data identifiers will not be redacted from the digital audio recordings of court proceedings.

9. In addition to continued viewing access at a public access terminal located in the Bankruptcy Clerk's office, the transcript restriction will be removed at the end of the 90-day period to allow remote electronic access to the transcript, as follows:

   a. 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 access terminal for printing and for download from the Court's CM/ECF system through the judiciary's PACER system.

   b. If a redacted version of the transcript is filed, the redacted version will be made available via remote electronic access and at the public access terminal for printing. The original unredacted transcript will not be available via remote electronic access but will remain available for viewing in the Bankruptcy Clerk's Office at the public access terminal. At the end of the 90-day restriction period, the unredacted version will be available for printing in the Bankruptcy Clerk's Office by Court staff unless the Court orders otherwise including upon the filing of a motion pursuant to Fed.R.Bankr.P. 9037(e).

IT IS FURTHER ORDERED that:

1. Attached Local Bankruptcy Rule 5007-1 is re-designated Local Bankruptcy Rule 5077-1, Local Bankruptcy Rule 5007-1(F) is repealed and Local Bankruptcy Rule 5007-1(B) and 5007-1(E) are amended.

2. This Standing Order shall take effect on March 16, 2009.

Dated: February 27, 2009

/s/ Douglas O. Tice Jr.
DOUGLAS O. TICE JR.
Chief United States Bankruptcy Judge

/s/ Stephen S. Mitchell
STEPHEN S. MITCHELL
United States Bankruptcy Judge

/s/ Stephen C. St. John
STEPHEN C. ST. JOHN
United States Bankruptcy Judge

/s/ Robert G. Mayer
ROBERT G. MAYER
 United States Bankruptcy Judge

/s/ Kevin R. Huennekens
KEVIN R. HUENNEKENS
United States Bankruptcy Judge

/s/ Frank J. Santoro
FRANK J. SANTORO
United States Bankruptcy Judge

REVISION

to the

LOCAL BANKRUPTCY RULES
(Version 02/19/09)

UNITED STATES BANKRUPTCY COURT
for the
EASTERN DISTRICT OF VIRGINIA

Effective Date: March 16, 2009

RULE ~~5007-1~~ <u>5077-1</u> TRANSCRIPTS

(A) *Certification of Record by Reporter*: [Repealed]

(B) *Copies of Transcripts Available to Public*: <u>Subject to any applicable Judicial Conference policy limiting electronic access to transcripts,</u> ~~T~~the Clerk shall provide copies of any filed transcript to the public upon request and the payment of prescribed copy fees, unless the Court orders that copies of the transcript not be made or that the transcript be sealed.

(C) *Use of Transcripts by Multiple Parties*: [Repealed]

(D) *Perfecting Record on Appeal*: [Repealed]

(E) *Payment for Transcripts*: The obligation to pay the reporter <u>or transcriber</u> for any and all transcripts shall be the joint and several personal obligation of the attorney and the party for whose benefit the transcript was obtained to the extent so ordered. Any charges for a transcript shall be payable upon the completion of the transcript or any segment thereof when a proper bill for same has been submitted by the reporter <u>or transcriber</u>.

(F) *Clerk's Duty to Make Transcripts Remotely Available Electronically; Redaction* [Repealed]

    ~~(1)~~ *Notice of Redaction and Submission of Statement to Court Reporter*

    Within 10 business days of the filing of an unredacted transcript by the court reporter, a party or witness may file a Notice of Redaction with the Clerk indicating the party's or witness's intention with respect to redaction of personal data identifiers from the electronic transcript of the court hearing. Simultaneously with the Notice of Redaction, the party or witness shall submit a statement to the court reporter indicating where in the transcript personal data identifiers appear and need to be redacted. Such personal data identifiers are Social Security and tax identification numbers; names of minor children; dates of birth; home addresses and financial account numbers. The court reporter shall redact from the electronic transcript the personal identifiers in the statement in the following manner and shall file the redacted transcript in the manner specified by the clerk:

        ~~(a)~~ *Social Security Numbers and Tax Identification Numbers*: If an individual's social security number or identification number must be included, only the last four digits of that number shall be included.

        ~~(b)~~ *Dates of Birth*: If an individual's date of birth must be included, only the year shall be used.

(c) *Names of Minor Children*: If the involvement of a minor child must be mentioned, only the initials of that child shall be used.

(d) *Homes Address*: If an individual's home address must be included, only the city and state shall be used.

(e) *Financial Account Numbers*: If a financial account number must be included, only the last four digits of that number shall be included.

(2) *Motion for Redactions in Addition to Personal Data Identifiers*: Unless otherwise ordered by the court, within 10 business days of the filing of the unredacted transcript, each party may file a motion requesting redaction of personal information in the transcript in addition to the personal data identifiers set forth in subparagraph (F)(1)(a) through (F)(1)(e).

(3) *Availability of Transcript*

(a) Where neither a timely Notice of Redaction nor a timely motion for additional redactions is filed, the unredacted transcript will be made remotely available electronically by the Clerk within three business days after the expiration of the 10-business-day period for filing a Notice of Redaction or a motion for additional redactions, 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 made remotely available electronically for up to a period of 60 days.

(b) In the event a redacted transcript is filed, the transcript will be made remotely available electronically by the Clerk within three business after the filing of the redacted transcript.

(c) An unredacted transcript filed with the Clerk may be examined in the Clerk's Office during public office hours after filing.

Comments

5077-1(C)-(D) The Administrative Office of the U.S. Courts has provided guidance to the courts on the statutory and policy requirements for copying official court transcripts of court proceedings filed with the clerk of court. Accordingly, paragraphs (C) and (D) of LBR 5077-1 are repealed. [Change effective 4/1/03.]

5007-1 Former Local Bankruptcy Rule 5077-1 is re-designated as Local Bankruptcy Rule 5007-1. Paragraph (A) is repealed. The first sentence of FRBP 5007(a) adequately addresses the requirement set forth in the deleted sentence and the second sentence is addressed by different means

with the reporter. Paragraphs (B) through (E) remain unchanged. Paragraph (F) is new. This paragraph balances the promotion of remote electronic access by the public to transcripts filed with the Clerk with the need to protect personal privacy concerns and other legitimate interests. The procedure set forth therein provides a means by which personal data identifiers and other information may be redacted from a transcript before the transcript is made remotely available electronically to the public. [Re-designated Rule 5007-1, amended Paragraph (A) and new Paragraph (F) effective 1/15/07.]

5007-1 Former Local Bankruptcy Rule 5007-1 is re-designated as Local Bankruptcy Rule 5077-1. [Re-designated Rule 5077-1 effective 03/16/09.]

5007-1(B) Paragraph (B) is amended to conform to requirements established by the Judicial Conference that limit electronic access to transcripts. [Amendment effective 03/16/09.]

5007-1(E) Paragraph (E) is amended to include the obligation to pay a transcriber for an ordered transcript. [Amendment effective 03/16/09.]

5007-1(F) Paragraph (F) is repealed and a standing order has been entered in view of a new policy of the Judicial Conference of the United States to make electronic transcripts of court proceedings available to the public. [Change effective 03/16/09.]