

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION AND NORTHERN DIVISION**

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|----------------------------|---|---------------|
| IN RE: |) | |
| PROCEDURES FOR THE FILING, |) | GENERAL ORDER |
| SERVICE, AND MANAGEMENT OF |) | 21-1000-KD |
| HIGHLY SENSITIVE DOCUMENTS |) | |

WHEREAS, in response to recent disclosures of breaches of both private sector and government computer systems, federal courts are immediately adding new security procedures to protect highly sensitive documents filed with the courts;

THE COURT FINDS that, pursuant to [Federal Rule of Civil Procedure 5\(d\)\(3\)\(A\)](#) and [Federal Rule of Criminal Procedure 49\(b\)\(3\)\(A\)](#), good cause exists to require all parties with cases in either of the Southern and/or Northern Divisions of the Southern District of Alabama, to file certain highly sensitive documents outside of the Court’s electronic filing system (CM/ECF); and

THEREFORE, IT IS HEREBY ORDERED that, effective as of the date of this order and until such time as the Court orders otherwise, the filing of certain highly sensitive documents (HSDs) shall be subject to the procedures and requirements set forth below. This General Order supersedes any and all inconsistent provisions in existing local rules or other general orders of this Court.

1. Documents Subject to this Order

A. Criminal cases

The following types of documents are deemed as HSDs: applications for search warrants and for electronic surveillance under 18 U.S.C. § 2518 prior to disclosure to the affected parties and assuming the party providing the documents requests such treatment, as well as any document that the presiding judge finds to be so sensitive that any disclosure would cause a high risk of extreme harm to a person or entity or would constitute a breach of National Security. It is the responsibility of the (U.S. Attorney or filing party) to determine if a document is highly sensitive and to seek HSD designation with the Court.

The following types of documents generally are not considered HSDs: Presentence reports, pretrial release reports, and pleadings related to cooperation in most criminal cases.

B. Civil/Misc. cases

An HSDs designation may apply to any document that the presiding judge in the case finds to be so sensitive that any disclosure would cause a high risk of extreme harm to a person or entity or would constitute a breach of National Security.

The following types of documents generally are not considered HSDs: social security records, administrative immigration records, and sealed filings in most civil cases.

It is the responsibility of the filing party in a case to determine if a document is highly sensitive and to seek HSD designation with the Court.

C. HSD dispute

Any dispute, as to whether a document is an HSD shall be resolved by the presiding judge, or, when no presiding judge is assigned, by the Chief Judge (or the Chief Judge's designee).

2. The HSD Submission & Designation Process

A. A party seeking HSD designation for a document shall submit to the clerk's office, in the form of either two paper copies or an electronic copy on a secure electronic device (as described in paragraph 6 below), the following items: the HSD, the certificate of service, and, if applicable, a copy of the Court order authorizing the treatment of that document as highly sensitive.

B. The required documents, unfolded and in paper form, or the secure electronic device shall be submitted to the clerk's office in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." The outside of the envelope shall be affixed with a copy of the HSD's caption page (with confidential information redacted).

C. The filing party shall serve the HSD on the other parties as follows:

1. Criminal cases - by any manner specified in [Federal Rule of Criminal Procedure 49\(a\)\(3\)\(B\) or \(a\)\(4\)](#).
2. Civil cases - by any manner specified in [Federal Rule of Civil Procedure 5\(b\)\(2\)](#), except for service via the Court's electronic filing system.

D. Upon receipt of the paper copies or an electronic copy on a secure electronic device, the clerk's office will make an informational docket entry in the Court's electronic filing system indicating that the HSD was filed with the Court and will maintain the HSD in a secure paper filing system or a secure stand-alone computer system that is not connected to any network.

3. Filing of Motions to Designate a Document or Documents as HSD

A. Represented parties

i. A represented party seeking HSD designation for a document or documents shall file a motion to treat a document as an HSD and a proposed order electronically under existing procedures, except that a copy of the proposed HSD shall not be filed electronically. The motion shall explain why the proposed document constitutes an HSD. In the event the explanation itself would be highly sensitive, the party shall serve a supporting brief as well as supporting affidavits (if necessary) on any opposing party (unless excused by Order or operation of law), and shall deliver said materials in hard copy printed form (but not file) to the presiding judge in the case. The presiding judge in the case shall determine if the brief and/or motion shall then be filed in CM/ECF under seal or otherwise or treated as an HSD.

ii. As soon as practicable after the motion is filed, the filing party shall submit to the clerk's office, the HSD sought to be filed along with a certificate of service, in the form of either two paper copies or an electronic copy on a secure electronic device (as described in paragraph 6 below). These documents or secure electronic device should be packaged as specified in paragraph 2.B. The Clerk shall receive but not file a copy of the proposed HSD electronically, and shall hold the document or secure electronic device in a secure location until the judge presiding over the matter rules on the motion.

iii. The filing party shall serve the proposed HSD on the other parties as specified in paragraph 2.C.

iv. Upon receipt of the paper copies or an electronic copy on a secure electronic device, and after an HSD designation determination, the Court will issue an order on the motion and, if granted, an informational entry will be made on the case docket indicating that the HSD has been filed with the Court. The clerk's office will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

B. Pro se parties

i. Pro se parties seeking HSD designation for a document shall submit to the clerk's office for filing: a motion to treat a document as an HSD, the HSD sought to be filed, and a certificate of service in the form of either two paper copies or an electronic copy on a secure electronic device (as described in paragraph 6 below). The Clerk shall receive but not file a copy of the proposed HSD electronically but shall instead hold the document or secure electronic device in a secure location until the judge presiding over the matter rules on the motion. These documents or secure electronic device should be packaged as specified in paragraph 2.B. The motion shall explain why the proposed document constitutes an HSD. In the event the explanation itself would be highly sensitive, the party shall serve a supporting brief as well as supporting affidavits

(if necessary) on any opposing party (unless excused by Order or operation of law), and shall deliver said materials in hard copy printed form (but not file) to the presiding judge in the case. The presiding judge in the case shall determine if the brief and/or motion shall then be filed in CM/ECF under seal or otherwise or treated as an HSD.

ii. The filing party shall serve the proposed HSD on the other parties as specified in paragraph 2.C.

iii. Upon receipt of the paper copies or an electronic copy on a secure electronic device, and after an HSD designation determination, the Court will issue an order on the motion and, if granted, an informational entry will be made on the case docket indicating that the HSD has been filed with the Court. The clerk's office will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

4. Service of Highly Sensitive Court Orders

If the Court determines that a Court order contains highly sensitive information, the clerk's office will file and maintain the order in a secure paper filing system or a secure standalone computer system that is not connected to any network and will serve paper copies of the order on the parties via mail. The clerk's office will make an informational docket entry in the Court's electronic filing system indicating that the HSD was filed and will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

5. Removal of Existing HSDs or Highly Sensitive Cases from the Court's Electronic Filing System

A. Upon motion of a party or upon its own motion, the Court may determine that a document, case, or any portion of it, that has been filed electronically is highly sensitive and direct that the HSD or case be removed from the Court's electronic filing system and maintained by the clerk's office in a secure paper filing system or a secure standalone computer system that is not connected to any network.

B. A party's motion to remove an HSD or highly sensitive case from the Court's electronic filing system shall explain why such document or case is highly sensitive. In the event the explanation itself would be highly sensitive, a supporting brief as well as supporting affidavits (if necessary) will be served upon any opposing party (unless excused by Order or operation of law) and then shall be delivered in printed form (or as otherwise directed) to the presiding judge. The presiding judge the matter shall determine if the brief and/or motion shall then be filed in CM/ECF under seal or otherwise or treated as an HSD.

6. Secure Electronic Device

A secure electronic device includes any device approved by this Court, including a USB flash drive commonly referred to as a thumb drive.

7. Questions about HSD Filing Procedures

Any questions regarding an HSD designation request and/or the HSD submission process pursuant to this General Order should be directed to the Clerk of this Court or his or her Chief Deputy.

IT IS SO ORDERED, this 11th day of January, 2021.

s/KRISTI K. DUBOSE

Kristi K. DuBose

Chief United States District Judge

Southern District of Alabama