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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO

RICHARD JONES
CLERK OF COURT
U.S. BANKRUPTCY COURT
CINCINNATI, OHIO

IN RE

GENERAL ORDER NO. 49-1

PROCEDURES FOR THE FILING,
SERVICE, AND MANAGEMENT OF
HIGHLY SENSITIVE DOCUMENTS

WHEREAS, in response to recent disclosures of wide-spread 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 good cause exists to require all parties to file highly sensitive documents outside of the Court's electronic filing system.

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 highly sensitive documents 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

The filing procedures set forth below apply to documents that contain highly sensitive information. Not all documents that contain confidential information are designated as highly sensitive documents. To avoid confusion, the Court provides the following guidance for designating highly sensitive documents.

- a. Factors that might be used to determine whether a document constitutes a highly sensitive document (HSD) include whether the case involves matters of national security, foreign sovereign interests, or cybersecurity; the extent of domestic or international interests; the involvement of public officials; intellectual property or trade secrets; or the reputational interests of the United States.¹
- b. The following types of documents generally are not considered HSDs: bank records; Social Security records; documents containing Social Security numbers and tax identification numbers; health records; documents containing unredacted identifiers protected under Fed. R. Bankr. P. 9037;

¹ The United States District Court for the Southern District of Ohio has determined that applications for electronic surveillance under 18 U.S.C. § 2518 are *per se* deemed to be HSDs. See United States District Court General Order No. 21-03 (In re: Procedures for the Filing, Service, and Management of Highly Sensitive Documents Relating to Civil or Criminal Proceedings). Other documents, including sealed filings in civil matters, generally are not considered HSDs, but may be designated by the District Court as HSDs based upon the specific circumstances of a given case. *Id.*

and most sealed or restricted filings in bankruptcy cases, adversary proceedings, and miscellaneous proceedings. Notwithstanding the foregoing, the Court retains the authority to seal documents that are not HSDs pursuant to 11 U.S.C. § 107.

- c. Any dispute as to whether a document is an HSD shall be resolved by the presiding judge or, when no presiding judge is assigned, the Chief Judge.

2. Filing of Motions to Treat a Document as an HSD

a. Represented parties

- i. A represented party shall file a motion to treat a document as an HSD and a proposed order electronically under Fed. R. Bankr. P. 9018, except that a copy of the proposed HSD shall not be filed electronically. The motion shall explain why the proposed document constitutes an HSD or why it should otherwise be subject to the heightened protection for HSDs. Not all documents that meet the criteria for filing under seal will qualify for treatment as an HSD.
- ii. As soon as practicable after the motion is filed, the filing party shall deliver to the clerk's office the proposed HSD along with a certificate of service. These documents should be packaged as specified in paragraph 3.b.
- iii. The filing party shall serve the proposed HSD on the other parties as specified in paragraph 3.c.
- iv. 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.

b. Pro se parties

- i. Pro se parties shall submit to the clerk's office for filing a motion to treat a document as an HSD, the proposed HSD, and a certificate of service. These documents should be packaged as specified in paragraph 3.b. The motion shall explain why the proposed document should be subject to the heightened protection for HSDs.
- ii. The filing party shall serve the proposed HSD on the other parties as specified in paragraph 3.c.
- iii. 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.

3. Filing of Authorized HSDs

- a. A party filing an HSD pursuant to a Court order or applicable law shall submit to the clerk's office 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, 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 in accordance with Fed. R. Bankr. P. 2002 or Fed. R. Bankr. P. 7004, as applicable.
- d. 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.

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 and will serve paper copies of the order on the parties via mail.

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.
- 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 or why it should otherwise be subject to the heightened protection for HSDs.


6. Questions about HSD Filing Procedures

Any questions about how an HSD should be filed with the Court pursuant to this General Order should be directed to the Office Supervisor for the location where the case or proceeding is filed.

IT IS SO ORDERED.

Dated: February 4, 2021

FOR THE COURT



Chief Judge Jeffery P. Hopkins
United States Bankruptcy Court
Southern District of Ohio