IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

IN RE:	)	
REVISED PROCEDURES FOR	)	**No. 2024-03**
REQUESTING, FILING, AND	)	
MANAGEMENT OF HIGHLY	)	
SENSITIVE DOCUMENTS	)	

GENERAL ORDER

WHEREAS on March 5, 2021, in response to disclosures of widespread breaches of both private sector and government computer systems, this court entered General Order 2021-01 adopting procedures for protecting documents containing highly sensitive material that require a greater level of security than that provided by electronically sealing such documents in the court's Case Management/Electronic Case Files (CM/ECF) System.

WHEREAS federal courts are updating security procedures to uniformly protect highly sensitive documents (HSDs), a narrow subset of sealed documents that must, for their protection, be stored outside the court's electronic systems.

THE COURT FINDS that good cause exists to permit nonelectronic filing under Federal Rules of Bankruptcy Procedure 5005(a)(2)(A) and 7005 (the latter of which incorporates, *inter alia*, Federal Rule of Civil Procedure 5(d)(3)(A)) and to adopt the revised HSD Guidance, Attachment A, which includes a standard definition of HSDs, a dedicated procedure for filing, serving, and maintaining HSDs, and factors to be considered by judicial officers in determining if a document is an HSD.

THEREFORE, IT IS HEREBY ORDERED that, effective as of the date of this General Order and until such time as the court orders otherwise, HSDs will be filed and served: (i) in paper form or (ii) only if the document cannot be filed in paper form, in digital media, on a secure electronic device, such as a flash drive, in accordance with this General Order and the HSD Guidance, Attachment A. HSDs will be maintained by the clerk's office in a secure paper filing system or secure standalone computer system that is not connected to any network. This General Order supersedes any and all inconsistent provisions in existing local rules or other general orders of this court, including General Order 2021-01, which is hereby rescinded.

1. **Documents and Materials Subject to this Order**

    (a) *Definition.* An HSD is a document or other material that contains sensitive, but unclassified, information that warrants exceptional handling and storage procedures to prevent significant consequences that could result if such information

were obtained or disclosed in an unauthorized manner. Although frequently related to law enforcement materials, especially sensitive information in a civil case could also qualify for HSD treatment.

    i. ***Examples of HSDs.*** Examples include, but are not limited to, *ex parte* sealed filings relating to national security investigations, cyber investigations, and especially sensitive public corruption investigations; and documents containing a highly exploitable trade secret, financial information, or computer source code belonging to a private entity, the disclosure of which could have significant national or international repercussions.

    ii. ***Exclusions.*** Most materials currently filed under seal do not meet the definition of an HSD and do not merit the heightened protections afforded to HSDs. The form or nature of the document, by itself, does not determine whether HSD treatment is warranted. Instead, the focus is on the severity of the consequences for the parties or the public if the document is accessed without authorization. Most presentence reports; pretrial release reports; pleadings related to cooperation in criminal cases; social security records; administrative immigration records; applications for search warrants; interception of wire, oral, or electronic communications under 18 U.S.C. § 2518; and applications for pen registers and trap and trace devices would not meet the HSD definition. In a bankruptcy case, the following additional types of documents generally are not considered HSDs: tax records; pay records; valuation reports; information about minors; documents related to domestic abuse; settlement agreements; and other sealed filings in most bankruptcy cases.

(b) ***Form.*** HSDs vary in their physical form and characteristics. They may be paper, electronic, audiovisual, microform, or other media. The term "document" includes all recorded information, regardless of its physical form or characteristics.

(c) ***Disputes.*** 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. Requesting HSD Designation

Any party seeking to file an HSD must, before such filing, seek leave of court for such filing in the manner provided below.

(a) ***Represented Parties.*** A represented party shall file electronically a motion to treat a document as an HSD with a proposed order under existing procedures as required by E.D. Tenn. LBR 5005-4, except that the represented party shall not file

electronically a copy of the proposed HSD with the motion. The HSD shall be filed separately using the procedures described in subparagraph 2(d) below.

(b) *Unrepresented Parties.* A party who is not represented by an attorney shall file manually a motion to treat a document as an HSD with a proposed order by submitting a paper copy of the motion to the clerk's office. The unrepresented party shall not file a copy of the proposed HSD with the motion. The HSD shall be filed separately using the procedures described in subparagraph 2(d) below.

(c) *Contents of Motion.* The motion must be accompanied by a certification of the movant's good-faith belief that the material meets the HSD definition. The movant must articulate why HSD treatment is warranted, including, as appropriate: the contents of the document; the nature of the investigation or litigation; and the potential consequences to the parties, the public, or national interests, in the event the information contained in the document is accessed or disseminated without authorization. The motion should include a description of the HSD sufficient for the court to consider the motion but should include no details of the HSD that would require the motion itself to be treated as an HSD. The motion should also set forth the movant's desired treatment of the proposed HSD in the event the motion is denied (e.g., withdrawal, redaction, or filing electronically under seal). The motion may be filed pursuant to E.D. Tenn. LBR 9013-1(g), except that a motion in an adversary proceeding should be filed pursuant to E.D. Tenn. LBR 7007-1.

(d) *Delivery of the HSD to the Court.* Within one business day after the motion is filed electronically or manually under subparagraph 2(a) or (b), the movant shall deliver manually to the clerk's office the HSD sought to be filed in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT" in the form of: (i) two unfolded paper copies or (ii) only if the document is digital media that cannot be filed in paper form, a secure electronic device, such as a flash drive. Only one HSD shall be included per envelope. The outside of the envelope shall be affixed with a copy of the case caption page (with confidential information redacted) and shall include the name, address, and phone number of the party submitting the HSD.

(e) *Notice and Service.* The movant shall serve the motion, proposed order, and a copy of the proposed HSD on all parties affected by the relief sought in the manner provided in Federal Rules of Bankruptcy Procedure 7004 and 7005, as applicable. The motion and proposed order, but not the proposed HSD, may be served via CM/ECF as provided in E.D. Tenn. LBR 9036-1. A copy of the proposed HSD shall be served on all parties affected by the relief sought. A certificate of service in accordance with E.D. Tenn. LBR 9013-3 shall be filed with the motion evidencing service of the motion, proposed order, and HSD on the appropriate parties. Nothing contained in this General Order shall prohibit a party from seeking to limit notice of the motion.

3. Docket Entry and Orders

(a) *Docket Entry.* On receipt of the motion and HSD, the clerk's office will notate and record a document number for the HSD, make an informational docket entry including that document number in CM/ECF indicating that the HSD was filed with the court, and maintain the HSD in a secure paper filing system or secure standalone computer system that is not connected to any network until an order of removal or destruction is entered.

(b) *Entry of Order on the Motion.* If appropriate, the court may set the motion for hearing. Otherwise, the court will issue an order on the motion and enter an appropriate informational docket entry to indicate whether the motion was granted or denied. An order granting a motion seeking HSD designation, or directing the filing of a document as an HSD on the court's own motion, should:

> ***i.*** State the identity of the persons who are to have access to the documents without further order of court; and

> ***ii.*** Set forth instructions for the duration of HSD treatment. HSDs are stored temporarily or permanently offline as the situation requires. When designating a document as an HSD, the order should indicate when the designation will automatically lapse or when the designation should be revisited by the judicial officer. HSDs should be migrated as sealed documents to CM/ECF and unsealed, as appropriate, as soon as the situation allows.

If the motion is denied, the court's order should address whether the document manually filed under subparagraph 2(d) should be docketed electronically and in what manner on consideration of the movant's stated request pursuant to subparagraph 2(c).

(c) *Service of Highly Sensitive Court Orders.* An opinion or order entered by the court related to an HSD may itself constitute an HSD if it reveals sensitive information in the HSD. If the court determines that a court order qualifies as an HSD, the clerk's office will file and maintain the order as an HSD in a secure paper filing system or secure standalone computer system that is not connected to any network, serve paper copies of the order on the affected parties via United States mail, and make an informational docket entry in CM/ECF.

4. Safeguarding Internal Communications

Care should also be taken in internal court communications regarding HSDs, including notes

and pre-decisional materials, not to include the protected substance of HSDs in any communication using the internet or a computer connected to a network.

5. **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 deputy in charge at each divisional office.

ENTERED: September 18, 2024.

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/s/ Suzanne H. Bauknight
SUZANNE H. BAUKNIGHT
Chief United States Bankruptcy Judge

/s/ Nicholas W. Whittenburg
NICHOLAS W. WHITTENBURG
United States Bankruptcy Judge

/s/ Rachel R. Mancl
RACHEL R. MANCL
United States Bankruptcy Judge

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HIGHLY SENSITIVE DOCUMENTS DEFINITION & GUIDANCE

Highly Sensitive Documents (HSDs) are a narrow subset of sealed documents that must, for their protection, be stored offline. The added protection for HSDs is important because, in the event of a breach of the courts' electronic case management system by a sophisticated actor, those documents are more likely to be sought out and stolen, or their unauthorized access or exposure are likely to have outsized consequences beyond that of most sealed documents, or both.

The following definition and guidance are intended to assist courts in identifying highly sensitive documents and managing the offline handling of HSDs. This guidance does not apply to classified information, which should be handled according to the Classified Information Procedures Act (CIPA) and the Chief Justice's Security Procedures related thereto, 18 U.S.C. app 3 §§ 1, 9(a).[1]

(a)   **Definition:** A **Highly Sensitive Document (HSD)** is a document or other material that contains sensitive, but unclassified, information that warrants exceptional handling and storage procedures to prevent significant consequences that could result if such information were obtained or disclosed in an unauthorized way. Although frequently related to law enforcement materials, especially sensitive information in a civil case could also qualify for HSD treatment.

    i.   **Examples of HSDs:** Examples include *ex parte* sealed filings relating to: national security investigations, cyber investigations, and especially sensitive public corruption investigations; and documents containing a highly exploitable trade secret, financial information, or computer source code belonging to a private entity, the disclosure of which could have significant national or international repercussions.

    ii.   **Exclusions:** Most materials currently filed under seal do not meet the definition of an HSD and do not merit the heightened protections afforded to HSDs. The form or nature of the document, by itself,

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[1] The Chief Justice's Security Procedures (criminal prosecutions) and the Department of Justice (DOJ) regulation 28 C.F.R. § 17.17(c) (civil actions) govern classified information in any form in the custody of a court. Such classified information may not be filed on CM/ECF or any other court network or standalone computer system. Courts are assisted in their protection of classified information by classified information security officers, who are detailed to the courts by the DOJ's Litigation Security Group, a unit independent of the attorneys representing the government. Courts should direct questions regarding how to handle classified documents to the DOJ's Litigation Security Group. See also, Robert Timothy Reagan, Keeping Government Secrets: A Pocket Guide on the State-Secrets Privilege, the Classified Information Procedures Act and Classified Information Security Officers, (Federal Judicial Center, 2d ed. 2013).

does not determine whether HSD treatment is warranted. Instead, the focus is on the severity of the consequences for the parties or the public should the document be accessed without authorization. Most presentence reports, pretrial release reports, pleadings related to cooperation in criminal cases, social security records, administrative immigration records, applications for search warrants, interception of wire, oral, or electronic communications under 18 U.S.C. § 2518, and applications for pen registers, trap, and trace devices would not meet the HSD definition.

(b) **HSDs: Sources and Characteristics**

    i.   HSD designation may be requested by a party in a criminal, civil, appellate, or bankruptcy matter.

    ii.   HSDs vary in their physical form and characteristics. They may be paper, electronic, audiovisual, microform, or other media. The term "document" includes all recorded information, regardless of its physical form or characteristics.

    iii.   An opinion or order entered by the court related to an HSD may itself constitute an HSD, if it reveals sensitive information in the HSD.

    iv.   An HSD in the lower court's record will ordinarily be also regarded by an appellate court as an HSD.

(c) **HSD Designation:**

    i.   A court's standing order, general order, or equivalent directive should include the HSD definition set forth in (a) above and outline procedures for requesting, filing, and maintaining HSDs.

    ii.   The onus is on the party, including the Department of Justice and other law enforcement agencies, to identify for the court those documents that the party believes qualify as HSDs and the basis for that belief. In moving for HSD treatment, the filing party must articulate why HSD treatment is warranted, including, as appropriate: the contents of the document; the nature of the investigation or litigation; and the potential consequences to the parties, the public, or national interests, in the event the information contained in the document is accessed or disseminated without authorization.

iii. **Judicial Determination:**

A. The presiding judge (or, when no presiding judge is available, the chief judge) should determine whether a document meets the HSD definition by evaluating whether a party has properly articulated sufficient reasons for such treatment, including the consequences for the matter, should the document be exposed. Most applications for HSD treatment are likely to be *ex parte*, but the presiding judge should resolve any disputes about whether a document qualifies as an HSD as defined in (a) above. The fact that a document may contain sensitive, proprietary, confidential, personally identifying, or financial information about an entity or an individual, that may justify sealing of the document or case, does not alone qualify the document as an HSD.

B. In making this determination, the court should consider properly articulated concerns that the unauthorized access or disclosure of the information contained in the document at issue would result in significant adverse consequences that outweigh the administrative burden of handling the document as an HSD. As a general matter, courts should give careful and appropriate consideration to the concerns articulated by the executive branch in matters implicating the authority of the executive branch to oversee the military and safeguard national security. If relevant, the court has the discretion to consider the impact of the heightened protection provided by offline placement to any other party's right of access.

(d) **Exceptional Administrative Treatment for HSDs:**

i. **Filing:** HSDs and requests for HSD treatment will be accepted for filing only in paper form or via a secure electronic device (*e.g.*, USB stick or portable hard drive).

ii. **Handling:** The court must handle the HSDs by storing all information offline. Furthermore, any pleadings or other filings created in connection with the proceedings should not disclose the subject matter of the HSD (including information that may identify the place, object, or subject of an *ex parte* filing).

iii. **Docketing:** Docket entries for HSDs should not include personal or other identifying details related to or contained within them. For example:

8/25/22   [no link]   SYSTEM ENTRY-Docket Entry 92
                               Restricted until further notice (Entered 8/25/22).

HIGHLY SENSITIVE DOCUMENTS DEFINITION & GUIDANCE

    iv.   **Storing:** HSDs shall be stored and handled only in a secure paper filing system, or an encrypted external hard drive attached to an air-gapped system (*i.e.*, entirely disconnected from networks and systems, including a court unit's local area network and the judiciary's network).

    v.   **Safeguarding Internal Communication:** Care should also be taken in judicial communications regarding HSDs, including notes and pre-decisional materials, not to include the protected substance of HSDs in any communication using the internet or a computer network.

(e)   **Duration of HSD Treatment:** HSDs are stored temporarily or permanently offline as the situation requires. When designating a document as an HSD, courts should indicate when the designation will automatically lapse or when the designation should be revisited by the judicial officer. HSDs should be migrated as sealed documents to the court's electronic docketing system and unsealed, as appropriate, as soon as the situation allows.