

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

**GENERAL ORDER ADOPTING 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 (“HSDs”) filed with the courts;

THE COURT FINDS that, pursuant to 11 U.S.C. §105(a), Fed. R. Civ. P. 5(d)(3)(A), and Fed. R. Bankr. P. 7005, good cause exists to require all parties to file HSDs outside of the Court’s case management electronic case filing system (CM/ECF);

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 HSDs is subject to the procedures and requirements set forth below. This General Order supersedes 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:

a. Factors that might be used to determine which documents may be considered an 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. Additionally, documents containing information which, if disclosed, would pose a clear and present danger to life and limb or result in grave or extreme harm, may be deemed an HSD.¹

b. The following types of documents generally are not considered HSDs: social security records; administrative immigration records; and sealed filings in most bankruptcy cases and adversary proceedings.

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.

¹ The United States District Court for the District of New Jersey has determined that the following types of documents will be presumed to be HSDs: (i) applications for interception of wire, oral or electronic communications pursuant to 18 U.S.C. § 2518; and (ii) all orders and warrants granting, authorizing, or denying the aforementioned documents. See United States District Court Standing Order 2021-01, dated January 26, 2021 (In re: Procedures for the Handling, Filing, Service and Management of Highly Sensitive Documents). The above referenced HSDs would be subject to this General Order if filed in the United States Bankruptcy Court for the District of New Jersey.

2. Motions to Treat a Document as a Highly Sensitive Document

a. A party seeking to treat a document as an HSD must file a motion explaining why the document constitutes an HSD **but shall not file a copy of the proposed HSD on CM/ECF.**

b. The moving party shall serve the proposed HSD in accordance with Fed. R. Bankr. P. 7004, Fed. R. Bankr. P. 7005, Fed. R. Bankr. P. 9014, and D.N.J. LBR 5005-1, *except* that the proposed HSD shall *not* be filed by electronic means through CM/ECF as set forth above in 2.a.

c. The moving party shall deliver or mail the motion, proposed order, and the proposed HSD to the Clerk's Office of the vicinage in which the presiding judge sits in hard copy format. Hard copies shall be submitted in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT."

d. Upon entry of an order that the document constitutes an HSD, the Clerk will maintain the HSD in a secure paper filing system.

e. So that HSDs are maintained by the Clerk for the minimum duration necessary, the proposed order must provide for the retrieval or disposal of the HSD at the conclusion of the matter.

3. Removal of Existing HSDs from CM/ECF

a. Upon motion of a party or upon its own motion, the Court may determine that a document that has been filed electronically is highly sensitive and direct that the HSD be removed from CM/ECF and maintained by the Clerk's Office in a secure paper filing system.

b. A party's motion to remove an HSD from CM/ECF must explain why such document should be afforded the heightened protection for HSDs under the criteria set out in paragraph 1.a. above. Prior to filing such a motion, serious consideration should be given to whether a document, which arguably contained HSDs when originally filed, still qualifies as an HSD, despite the passage of time or change in circumstances. 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 judge presiding over the case. The judge presiding over 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.

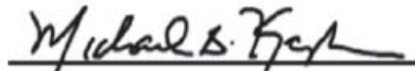
4. Treatment of non-HSDs Meriting Protection

Parties should continue to utilize the procedures set forth in Fed. R. Bankr. P. 9018 and D.N.J. LBR 9018-1 for non-HSDs that merit protection for sealed documents under 11 U.S.C. § 107(b) or (c).

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 of the Clerk's Office for each vicinage. Contact information is provided on the Court's website www.njb.uscourts.gov. HSDs must *not* be emailed to the ECF helpdesk.

IT IS SO ORDERED, this 26 day of January 2021.

A handwritten signature in black ink, appearing to read "Michael B. Kaplan", is written over a horizontal line.

Michael B. Kaplan, Chief Judge
U.S. Bankruptcy Court
District of New Jersey