

FEB 26 2021

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

David J. Smith
Clerk

AMENDED GENERAL ORDER NO. 48

Procedures for the Filing, Service, and Management of
Highly Sensitive Documents

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, pursuant to Federal Rule of Appellate Procedure 25(a)(2)(B), good cause exists to require all parties to file certain highly sensitive documents outside of the Court's Electronic Case Files (ECF) system.

Therefore, it is hereby ORDERED that, effective as of the date of this order and until the Court orders otherwise, the filing of certain highly sensitive documents shall be subject to the procedures and requirements set forth below. This General Order supersedes any 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. The following types of documents are deemed highly sensitive documents (HSDs): applications for search warrants that are currently sealed by the district court, applications for electronic surveillance under 18 U.S.C. § 2518, and any document deemed an HSD by another federal court. The Court may also determine on a case-by-case basis that other types of documents are HSDs.

b. The following types of documents are examples of documents that generally are not considered HSDs: presentence investigation reports, pretrial release reports, pleadings related to cooperation in most criminal cases, social security records, administrative immigration records, and sealed filings in most civil cases.

c. Any dispute as to whether a document is an HSD shall be resolved by a judge or panel of this Court.

2. 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 in the form of either two paper copies or an electronic copy on a secure electronic device (as described in paragraph 6 below).

b. The required documents, unfolded, 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 by any manner specified in Federal Rule of Appellate Procedure 25(c)(1).

d. The clerk's office will make an informational docket entry in the Court's ECF system indicating that the HSD was filed with the Court and will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

e. The public version of an appendix that omits an HSD or sealed material must include a prominent notation that such material has been omitted. The public version of any other document must redact any references to an HSD or sealed material.

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

a. ECF Filers

i. Filers who use the ECF system shall file a motion to treat a document as an HSD electronically in accordance with 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 or why it should otherwise be subject to the heightened protection for HSDs.

ii. As soon as practicable after the motion is filed, the filer shall deliver 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.

iii. The filer shall serve the proposed HSD on the other parties as specified in paragraph 2.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 or a secure standalone computer system that is not connected to any network.

b. Non-ECF Filers

i. Non-ECF filers 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). 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 or why it should otherwise be subject to the heightened protection for HSDs.

ii. The filer shall serve the proposed HSD on the other parties as specified in paragraph 2.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 or a secure standalone computer system that is not connected to any network.

4. 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. Unless the Court orders otherwise, an informational entry will be made on the case docket indicating that an order containing highly sensitive information has been issued.

5. Removal of Existing HSDs or Highly Sensitive Cases from the ECF 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 ECF 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 ECF 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. Secure Electronic Device

A secure electronic device is an encrypted password-protected flash drive secured by a minimum 8-character password consisting of a combination of uppercase, lowercase, numeric, and special characters. The password must be emailed to: clerks_office@ca11.uscourts.gov.

7. 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 clerk's office at 404-335-6100.

It is further ORDERED that General Order No. 48, entered January 13, 2021, is vacated.

/s/ William H. Pryor Jr.
Chief Judge