



**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

**STANDING ORDER REGARDING
HIGHLY SENSITIVE DOCUMENTS**

In response to recent disclosures of wide-spread breaches of private sector and government computer systems, the Court of Appeals for the Third Circuit hereby adopts new security procedures intended to protect highly sealed documents (HSDs). Parties shall file HSDs in paper form, or if in digital media format or voluminous in nature, on a secure electronic device. The Clerk's Office will store HSDs in a secure paper file system or secure standalone computer system that is not connected to the internet or to any other network.

For purposes of this order, HSDs are defined as documents involving: (1) Title III applications; (2) initial applications for search warrants; (3) matters of national security; (4) foreign sovereign interests, or cybersecurity; (5) terrorism; (6) investigation of public officials; (7) intellectual property or trade secrets likely to be of interest to foreign powers; or (8) the reputational interests of the United States.

Sealed documents that do not fall within the HSD definition shall be filed and served in accordance with established procedures under 3rd Cir. L.A.R. 106 and will be maintained under seal in CM/ECF. The following types of documents shall continue to be subject to restricted access under the current rules and policies, but generally will not qualify as HSDs: (1) presentence reports and related documents; (2) pleadings related to cooperation in most criminal cases; (3) social security administrative records and case filings; (4) immigration administrative records and case filings; (5) railroad retirement

board administrative records and case filings; and (6) most sealed documents in civil cases.

Documents designated by the district court as HSDs will be accorded the same status in this Court and shall be filed and served outside of this Court's CM/ECF system.

Accordingly, the following procedures are established:

Filing a Document Designated as HSD by a District Court

- 1) Within 14 days from the date a case is opened in the Court of Appeals, a party must notify the Clerk in writing if the party intends to file with this Court a document previously designated as HSD by the district court;
- 2) If the designated HSD is in digital media format or voluminous, the party shall first contact the Clerk's Office at 215-597-2995 and leave a message for the case management team. A member of the Clerk's Office staff will respond promptly to the party and will specify the security standards required for submitting a secured electronic device containing the HSD;
- 3) The letter of intent to file, along with the HSD either on paper or on a secured electronic device, must be placed in a sealed envelope clearly marked with the case number and labeled "HIGHLY SENSITIVE DOCUMENT";
- 4) The party shall serve the letter of intent on all other parties by mail, hand delivery, or courier with proof of service under Fed. R. App. P. 25(d)(1);
- 5) Prior to filing a motion or response relying on HSD, the party must notify the Clerk. The Clerk will forward any previously filed HSD, along with the motion or response, to the panel considering the matter. Any HSD filed in a case will be submitted to the merits panel as a matter of course. If the parties later determine that the HSD is not needed for resolution of the appeal on the merits, the parties shall advise the Clerk prior to the calendaring of the appeal, and;
- 6) If a Court opinion, order, or other document discloses HSD, that document will be afforded the same protections as HSD, and shall be filed in a secure paper filing system or secure standalone computer, and shall be served on the parties by mail.

Motions Requesting HSD status for a Document to be Filed with the Court

- 1) Requests to have a document designated as HSD shall be addressed to the court where the document was initially filed in the first instance;
- 2) A party seeking to have a document treated as HSD in this Court shall submit a motion in paper format with the Clerk which a) demonstrates reasons why the document falls within the definition of HSD; b) sets forth the potential for irreparable injury if the document is not treated as HSD; and c) includes any negative ruling by a lower court as to HSD designation;
- 3) Along with the motion, the party shall file the proposed HSD in paper form; or if the document is in digital media format, or is otherwise voluminous, the party shall file the proposed HSD on a secure electronic device. A party submitting a proposed HSD on a secure electronic device shall first contact the Clerk's Office at 215-597-2995 and leave a message for the case management team. A member of the Clerk's Office staff will respond promptly to the party and will specify the security standards required for the electronic device and handling procedures for such a submission;
- 4) The party may request HSD designation for only such portion of the document that falls within the HSD definition, such as specific pages of the document or transcript. An entire document will not be designated HSD simply because discrete portions of it that are susceptible to being redacted qualify for HSD status;
- 5) The party shall serve the motion and the proposed HSD on all other parties by mail, hand delivery, or courier with proof of service under Fed. R. App. P. 25(d)(1);
- 6) Within 10 days from service of the motion, any party may file a response in paper format, with service by mail, hand delivery, or courier on all other parties with proof of service under Fed. R. App. P. 25(d)(1);
- 7) The party filing the motion seeking HSD designation or a response must place the documents in a sealed envelope clearly marked with the case number and labeled "HIGHLY SENSITIVE DOCUMENT";
- 8) The Court will rule on the motion by issuing an order in paper format and forward the same to the parties by mail;

- 9) Prior to filing a motion or response relying on HSD, the party must notify the Clerk. The Clerk will forward any previously filed HSD, along with the motion or response, to the panel considering the matter. Any HSD filed in a case will be submitted to the merits panel as a matter of course. If the parties later determine that the HSD is not needed for resolution of the appeal on the merits, the parties shall advise the Clerk prior to the calendaring of the appeal; and,
- 10) If a Court opinion, order, or other document discloses HSD, that document will be afforded the same protections as HSD, and shall be filed in a secure paper filing system or secure standalone computer, and shall be served on the parties by mail.

Motions for HSD Status for Documents Currently in the Court's Filing System

- 1) A party may seek to have a previously filed document treated as HSD by filing a motion in paper format with the Clerk. The motion shall (a) set forth reasons why the document falls within the definition of HSD; (b) specify the potential for irreparable injury if the document is not treated as HSD; and (c) include any ruling by a lower court as to HSD designation;
- 2) The motion should be filed in paper format and submitted in a sealed envelope in the same manner as a motion seeking original HSD designation prior to filing;
- 3) The proposed HSD document need not be included with a motion seeking retroactive application if the document is currently available on the docket in electronic format;
- 4) The Court will rule on the motion by issuing an order in paper format and the Clerk will forward the order to the parties by mail;
- 5) If a document is determined to be HSD, it will be removed from the Court's filing system and maintained in a secure paper or filing system or secure standalone computer.

Questions Concerning HSD Filing Procedures

All inquiries concerning how to proceed under this order shall be directed to the Clerk's Office at 215-597-2995 and select the Case Management Team prompt.

Further Changes to HSD filing Procedures

The Court will make such modifications to this Order as needed, without notice or an opportunity for comment.

By the Court,

/s/ D. Brooks Smith
Chief Judge

DATED: February 23, 2021



A True Copy:

Patricia S. Dodszeweit

Patricia S. Dodszeweit, Clerk