

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE**

**NOTICE TO THE BAR AND PUBLIC CONCERNING GENERAL ORDER
NO. 2021-01 ADOPTING PROCEDURES FOR THE FILING, SERVICE, AND
MANAGEMENT OF HIGHLY SENSITIVE DOCUMENTS**

The bar and public are advised that, in response to recent disclosures of widespread breaches of both private sector and government computer systems, the United States Bankruptcy Court for the Eastern District of Tennessee has added new security procedures to protect Highly Sensitive Documents (“HSDs”) filed with the court.¹ These procedures can be found in the attached *General Order No. 2021-01 Adopting Procedures for the Filing, Service, and Management of Highly Sensitive Documents*.

Please note that a new docket event, *Motion for Highly Sensitive Document (HSD) Designation*, has been added to CM/ECF and may be found in the “Motions/Applications/Requests” category. The docket event is available for immediate use and should be utilized when seeking an HSD designation. *General Order No. 2021-01* is available on the Court’s website, www.tneb.uscourts.gov.

Dated: March 5, 2021

William T. Magill, Clerk of Court

¹ On January 6, 2021, the Administrative Office of the United States Courts provided notice of a national breach of the CM/ECF system and called upon courts to implement new security procedures to protect highly sensitive documents. For more information, visit <https://www.uscourts.gov/news/2021/01/06/judiciary-addresses-cybersecurity-breach-extra-safeguards-protect-sensitive-court>.

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

IN RE:)	
PROCEDURES FOR THE FILING,)	No. 2021-01
SERVICE, AND MANAGEMENT OF)	
HIGHLY SENSITIVE DOCUMENTS)	
)	

GENERAL ORDER

WHEREAS, in response to recent disclosures of widespread breaches of both private sector and government computer systems, federal courts are immediately adding new security procedures to protect Highly Sensitive Documents (as defined herein) 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 (CM/ECF).

THEREFORE, IT IS HEREBY ORDERED that, effective as of the date of this General 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.

(a) *Highly Sensitive Documents.* Highly Sensitive Documents (“HSDs”) are documents that are likely to be targeted in breaches of judiciary computer systems for which the protections provided by 11 U.S.C. § 107 and Federal Rule of Bankruptcy Procedure 9037 are not adequate.

(b) *Examples of HSDs.* The following types of documents are examples of HSDs: classified documents; documents relating to matters of national security, foreign sovereign interests, terrorism, cybersecurity, the investigation of public officials, or which concern the reputational interests of the United States; and documents containing sensitive commercial information, intellectual property, or trade secrets likely to be of interest to foreign powers or the disclosure of which would cause significant external damage.

- (c) ***Documents Not Considered HSDs.*** Few documents that meet the criteria for filing under seal will qualify for treatment as an HSD. The following types of documents generally are not considered HSDs: bank records; business records; financial records; tax records; documents reporting settlements; Social Security records and other documents containing Social Security numbers or taxpayer identification numbers; health records; criminal records; documents containing information about minors; sealed filings in civil and administrative cases; documents sealed to protect the reputation of parties or counsel; documents that originally contained highly sensitive information but which can still fulfill their purpose after highly sensitive information has been redacted; documents containing unredacted personal identifiers listed in Federal Rule of Bankruptcy Procedure 9037; and documents to which public access is routinely restricted to protect privacy and prevent identity theft, including sealed filings in many bankruptcy cases and adversary proceedings that are not sufficiently sensitive to require HSD treatment and that may continue to be sealed in CM/ECF as necessary.
- (d) ***Resolution of 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. Filing of Motions to Treat a Document as an HSD

- (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 as described in subparagraph 2(a) above by submitting a paper copy of the motion to the clerk's office or under the procedures for filing without an attorney listed on the court's website, www.tneb.uscourts.gov. 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 shall explain why the proposed document constitutes an HSD under the criteria set out in paragraph 1 above or why it should otherwise be subject to the heightened protections for HSDs. 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 the form of two unfolded paper copies in a sealed 9^{1/2} x 11 envelope marked "HIGHLY SENSITIVE DOCUMENT." 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) *Manual Filing During COVID-19 Pandemic.* During the time that the clerk's office intake counter is closed due to the COVID-19 pandemic pursuant to General Order 2020-07, manual filings related to an HSD, including those by unrepresented parties under subparagraph 2(b) and delivery of an HSD to the court under subparagraph 2(d), shall be made in the following manner:

- i.* by United States mail, postage prepaid, addressed to the clerk of the court at the appropriate divisional office and including the filer's contact information such as an email address or phone number; or
- ii.* by telephoning the clerk's office at the appropriate divisional office during normal business hours to arrange to have the document dropped off for filing.

(f) *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 in the form of a paper copy. 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 to indicate that the HSD was filed with the court, and maintain the HSD in a secure paper filing system 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. 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 upon consideration of the movant's stated request pursuant to subparagraph 2(c).

(c) *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 United States mail.

4. 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: March 5, 2021.

/s/ Shelley D. Rucker
SHELLEY D. RUCKER
Chief United States Bankruptcy Judge

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

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