

The Administrative Office of the U.S. Courts recently provided notice of a national breach of the CM/ECF system and called upon courts to implement new security procedures to protect a category of highly sensitive documents (“HSDs”). In response to this call, the District of Nevada will require parties to submit HSDs outside of the Court’s CM/ECF system.¹ The following instructions apply only to HSDs submitted after January 15, 2021, and do not change the procedures for filing sealed documents that do not meet the definition of HSDs. Classified documents will continue to be handled in accordance with existing statutes and procedures.

1. Definition of HSD.

- a. “HSD” does not refer to all sensitive or confidential information. Indeed, very few documents filed under seal in federal court are HSDs. Instead, HSDs are unclassified, sealed documents involving: foreign sovereign interests; criminal activity related to cybersecurity, intellectual property, or trade secrets; terrorism; investigation of public officials; information that could have a potentially negative impact on the national security or foreign relations of the United States; and sensitive commercial information likely to be of interest to foreign powers.
- b. The Court anticipates that the following types of sealed documents may often contain information warranting an HSD designation:
 - i. Applications for search warrants; and
 - ii. Applications for electronic surveillance under 18 U.S.C. § 2518.
- c. But the Court anticipates that the following types of sealed documents are unlikely to contain information warranting an HSD designation:
 - i. Presentence reports, pretrial-release reports, and documents related to such reports;
 - ii. Pleadings related to cooperation in most criminal cases;
 - iii. Social Security records;
 - iv. Administrative records in immigration cases; and
 - v. Most sealed filings in civil cases.

2. Procedure for Filing HSDs.

- a. If a party determines that a document warrants an HSD designation, that party must not file the document in the Court’s electronic filing system but must instead:
 - i. Put the document in an envelope with the notation “Highly Sensitive Document” on the outside of the envelope. The party must include in

¹The Court notes its current practice allows for certain documents that fall within this category of HSDs to be submitted to the Court outside of CM/ECF.

the envelope a brief statement explaining how the document qualifies as an HSD as defined above. The envelope must be sealed and placed in an outer envelope or package addressed to the Clerk's Office. "Highly Sensitive Document" or "HSD" must not be visible on the outer envelope or package.

- ii. Hand-deliver the envelope to the Clerk's Office secured drop box; or send the envelope by mail to the Clerk's Office.
 - iii. File a Notice of Electronic Filing in compliance with LR IC 1-1(d).
- b. The party must still serve the HSD on the other parties to the case as they would normally be required to do, but without filing any electronic copies and otherwise by taking appropriate precautions to safeguard the confidentiality of the information in the HSD.
 - c. 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.

3. Court Review.

- a. The Court may review any document that is submitted with an HSD designation to determine if the document meets the above definition of HSD.
- b. The Court may also, on its own motion, determine that any document filed in CM/ECF as a sealed or restricted document must be submitted as an HSD. If the Court determines that a document that was filed in CM/ECF as a sealed or restricted document must be submitted as a sealed document subject to an HSD designation, the Clerk's Office will remove the document from the case docket and add an informational entry on the case docket indicating that the document was submitted as an HSD. The Clerk's Office will then maintain the newly-designated HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.
- c. The Court may also, on its own motion, determine that a document submitted as an HSD was inappropriately designated. If that is the case, the presiding judge will issue an order directing briefing from the parties on: (1) whether the document was inappropriately designated as HSD; (2) whether the document should be refiled as a sealed or unsealed document; and (3) whether the party who inappropriately designated the document an HSD should be subject to any sanction, and what that sanction should be.