

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

IN RE:

PROCEDURES FOR THE FILING, SERVICE,
AND MANAGEMENT OF HIGHLY
SENSITIVE DOCUMENTS,

Administrative Order
No. 21-02

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 Bankruptcy Rule 5005(a)(2)(A) and (B), good cause exists to require all parties to file certain highly sensitive documents outside of the Court's electronic filing system.

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 certain highly sensitive documents must be subject to the procedures and requirements set forth below. This Administrative Order supersedes any and all inconsistent provisions in this Court's existing Local Rules or other Administrative Orders.

1. Definition of Highly Sensitive Documents

The filing procedures set forth below apply to documents that contain highly sensitive information.

a. Highly Sensitive Documents. The following types of documents are deemed Highly Sensitive Documents (HSD): documents pertaining to matters of national security, foreign sovereign interests or cybersecurity; documents involving public officials or the reputation of the United States; documents regarding post-judgment search or seizure by the Federal Government in which advanced notice via electronic record to any extent may be damaging to the Government's objectives; and documents including intellectual property, trade secrets or other proprietary information that movant can demonstrate would promote unfair competition practices or endanger the possibility of debtor's reorganization.

b. Documents Not Considered Highly Sensitive. The following types of documents generally are not considered HSD: bank records, Social Security records; other documents containing Social Security numbers or taxpayer identification numbers; health records; documents containing unredacted personal or business identifiers listed in Bankruptcy Rule 9037; and the majority of restricted or sealed filings in bankruptcy cases, miscellaneous cases, and adversary proceedings, for which filing electronically under existing procedures provides sufficient security.

c. Any dispute as to whether a document is an HSD must be resolved by the Judge presiding over the case or, when no presiding Judge is assigned, the Chief Judge.

2. Filing of Motions to Designate Documents Highly Sensitive

a. Represented parties. A represented party must file a motion to file a document under seal and designate said document as an HSD electronically, as required by Bankruptcy Rule 5005 except that a copy of the proposed HSD must not be filed with the Court at that time. The motion and proposed order, if filed using the appropriate electronic case filing system event, will be restricted to Court staff only and must remain so unless otherwise ordered by the Court. The pleading should include a description of the HSD sufficient for the Court to consider the motion and must demonstrate clearly why the movant believes said document to be highly sensitive. The proposed order should include no details of the alleged HSD and should reflect only that the motion to file an HSD under seal has been granted. If the Court requires a copy of the alleged HSD to rule on the motion, an order will be entered to submit it to the Court in paper format or, if appropriate, other media as the Court may direct.

b. Unrepresented parties. A party who is not represented by counsel must file the motion and proposed order in paper format with the Clerk's Office in either Bay City, Detroit, or Flint. The pleading should include a description of the HSD sufficient for the Court to consider the motion and must demonstrate clearly why the movant believes said document to be highly sensitive. The proposed order should include no details of the alleged HSD and should reflect only that the motion to file an HSD under seal has been granted. If the Court requires a copy of the alleged HSD to rule on the motion, an order will be entered to submit it to the Court in paper format or, if appropriate, other media as the Court may direct.

3. Orders Authorizing HSD and Filing of Authorized HSD

a. Entry and Service of Order Granting the Motion. If the Court grants the motion, the Clerk will include information in the "docket text" of the case record and/or the order itself that directs the movant to file the HSD with the Court and how to file the HSD. This will generally be in paper format but depending on the size or type of document, the Court may direct the filer to file the document in a different format or media.

i. As detailed above, proposed orders should not include any details regarding the HSD; however, if the order entered by the Court contains any details of the HSD, the order will not be uploaded to the electronic case filing system; an entry will be docketed that the motion was granted (with no details as to the HSD) and the order will be maintained securely in paper format or on a standalone computer not connected to any network.

ii. If the order contains details of the HSD or any other highly sensitive information and is not uploaded to the case record electronically, a paper copy will be mailed to the movant or movant's counsel.

iii. Movant or movant's counsel is responsible for serving notice of the entry of the order (or a copy of the order) on all interested parties; the Clerk will mail a copy only to the movant or movant's counsel.

b. Filing the HSD. A party filing a HSD pursuant to an order of the Court must file the following with the Clerk's Office by mail or by in-person filing only: a copy of the

order allowing the filing of the HSD; the HSD in the format prescribed by the Court; and the certificate of service.

i. The Court will not accept any HSD or any document containing details of an HSD by email or facsimile submission as allowed for other documents by this Court's Local Rules and previous Administrative Orders.

ii. Unless impractical due to the volume or format of the HSD, the required document, unfolded, must be submitted to the Clerk's Office in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." The outside of the envelope must be affixed with a copy of the HSD's caption page (with confidential information redacted) and a copy of the Court's order allowing the filing of the document as an HSD.

iii. The Clerk's Office will docket an entry in the Court's electronic filing system indicating that the HSD was filed with the Court (with no details of the HSD) and will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

4. Questions about HSD Filing Procedures

Any questions about how an HSD should be filed with the Court pursuant to this Administrative Order should be directed to the Clerk's Office at (313) 234-0065.



/s/ Daniel S. Opperman
Daniel S. Opperman
Chief Judge
United States Bankruptcy Court
For the Eastern District of Michigan

Signed on March 10, 2021