

## United States Court of Appeals for the Ninth Circuit

### Administrative Order Regarding the Filing, Service, and Management of Highly Sensitive Documents (HSDs) (January 16, 2021)

Following a security audit of CM/ECF by the Department of Homeland Security, the Secretary of the Judicial Conference issued a policy directive that all federal courts start accepting highly sensitive documents (HSDs) for filing only in paper form or via a secure electronic device, and that courts store HSDs in a secure paper filing system or on a secure, standalone computer system not connected to any network. Implementation is left to each court. This administrative order establishes initial procedures to identify and ensure the security of HSDs. Modifications may be made by further administrative order or by adoption of General or Special Orders or rule changes.

#### A. General Principles

The presumption in favor of public access to court documents remains intact, and this court's procedures for filing sealed documents electronically ([Circuit Rule 27-13](#)) are unchanged. By this Order, the court creates a new level of protection for HSDs.

In this Circuit, HSDs are defined as: Unclassified sealed documents involving: foreign sovereign interests; criminal activity related to cybersecurity, intellectual property, or trade secrets; terrorism; investigation of public officials; potential negative impact on national security or foreign relations of the United States; and sensitive commercial information likely to be of interest to foreign powers.

The following types of documents have restricted access under Circuit Rule 27-13, 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; (4) immigration administrative records; and (5) most sealed documents in civil cases.

Classified documents will continue to be handled in accordance with existing statutes and procedures.

## **B. HSD Designation by Originating Court or Agency Required**

If an originating court or agency designates a document as HSD, the document will retain that designation on appeal absent an order of this court to the contrary. No motion is required. If an originating court or agency maintains a document electronically (because it is not designated as an HSD), this court will presumptively do the same. Any request to re-designate sealed documents currently residing on CM/ECF as HSDs should therefore be directed to the originating court or agency in the first instance.

## **C. Documents Not Part of the Originating Court or Agency Record**

In the rare circumstance when a party wishes to submit to the court of appeals a document that is not part of the originating court or agency record, and seeks to have that document designated as HSD, the party must submit a motion that satisfies the sealing requirements in Circuit Rule 27-13, and specifically addresses: (a) why the court of appeals should accept documents that are not part of the originating court or agency record, (b) how the documents fall within the definition of HSD, and (c) what potential irreparable injury the United States will face if the documents are not treated as HSDs.

## **D. Transmission of HSD Material**

- (1) HSDs and related motions must be transmitted to this court in (a) paper format or (b) as an electronic copy on a secure electronic device.
- (2) Any electronic copy must be submitted on a Windows compatible USB flash drive, DVD, CD, or portable hard drive that is labeled with the case number and the date it was presented to the Clerk's Office. Materials must be in a familiar file format that can be accessed using commonly available software and must use a naming convention that clearly identifies each individual file.
- (3) Paper and electronic copies must be sealed in an interior envelope marked "HIGHLY SENSITIVE DOCUMENT." The outside of the envelope must state the case number and name, the type of filing, and the HSD designation in the district court or agency.

## **E. Service**

The filing party must serve the HSD on the other party by personal delivery, mail, or third-party carrier, as specified by Fed. R. App. P. 25(c)(1)(A)-(C). A certificate of service should be included with the HSD submission in paper or electronic format.

## **F. Questions about HSD Filing Procedures**

Any questions about how to proceed under this Administrative Order should be directed to the Clerk's Office at [HSD@ca9.uscourts.gov](mailto:HSD@ca9.uscourts.gov).



Sidney R. Thomas  
Chief Judge