

**UNITED STATES BANKRUPTCY COURT  
EASTERN AND WESTERN DISTRICTS OF ARKANSAS**

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In re  
**PROCEDURES FOR FILING, SERVICE, AND  
MANAGEMENT OF HIGHLY SENSITIVE  
DOCUMENTS**

**General Order No. 42**

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**WHEREAS**, 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;

**WHEREAS**, the United States Bankruptcy Court for the Eastern and Western Districts of Arkansas (“the court”) finds that, pursuant to Civil Rule 5(d)(3)(A), as incorporated by Fed. R. Bankr. P. 7005, good cause exists to require all parties to file certain highly sensitive documents outside of the court’s electronic filing system;

**WHEREAS**, the court adopts the following procedures and requirements for the filing of certain highly sensitive documents; accordingly, it is hereby

**ORDERED** that the following is hereby adopted:

**1. Documents Subject to this Order**

The filing procedures described herein apply only to documents that are designated as highly sensitive documents (“HSD(s)”). Not all documents that contain confidential information are designated as HSD(s). To avoid confusion, the court provides the following guidance for designating HSD(s):

- a. The following types of documents are deemed HSD(s): applications for search warrants, applications for electronic surveillance under 18 U.S.C. § 2518, applications for a court order under 18 U.S.C. § 2703(d), sealed court orders or any other sealed documents generated by a court that contain highly sensitive information, and any documents which involve matters of national security, foreign sovereign interests, cybersecurity, domestic or international interests, public officials, intellectual property, trade secrets, sensitive commercial information likely to be of interest to foreign powers, or the reputational interests of the United States.
- b. The following types of documents generally are not considered HSD(s) but may be designated by the court as HSD(s) based on the specific circumstances of a given case: presentence reports, pretrial release reports, pleadings related to cooperation in most criminal cases, social security records, administrative immigration records, and sealed filings in many civil cases. Parties who believe that a given document in these categories is an HSD(s) should seek designation

from the court as such.

- c. 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 Authorized HSDs**

- a. A party filing an HSD pursuant to a court order or applicable law shall submit to the clerk's office the HSD and, if applicable, a copy of the court order authorizing the treatment of that document as highly sensitive, in the form of a single paper copy.
- b. The required documents, unfolded, shall be submitted to the clerk's office in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." A copy of the HSD's caption page (with confidential information redacted) shall be affixed to the outside of the envelope by the filing party.
- c. The filing party shall serve the HSD on the other parties by any manner specified in Rule 5(b)(2) F.R.Civ.P., as incorporated by Fed. R. Bankr. P. 7005, except for service via the court's electronic filing system; or
- d. The clerk's office will make an informational docket entry in the court's electronic filing system indicating that the HSD was filed with the court and will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

## **3. Filing of Motions to Treat a Document as an HSD**

- a. Represented parties
  - i. A represented party seeking to have a particular document designated as an HSD shall file electronically, pursuant to normal CM/ECF procedures, a motion seeking such designation to treat a document as an HSD, except that a copy of the proposed HSD shall not be filed electronically. The filing party should take care to ensure that confidential information from the HSD does not appear in the motion itself. The motion shall explain why the proposed document constitutes an HSD under the criteria set out in paragraph 1.a. above or why it should otherwise be subject to the heightened protection for HSDs.
  - ii. As soon as practicable after the motion is filed, the filing party shall deliver to the clerk's office the HSD sought to be filed along with a certificate of service in the form of two paper copies. These documents should be packaged as specified in paragraph 2.b. The clerk's office shall provide the proposed HSD to the judge who is handling the motion referenced in Paragraph 3.a.i.
  - iii. The filing party shall serve the proposed HSD on other parties as specified in paragraph 2.c.
  - iv. The court will issue an order on the motion and, if granted, an informational entry will be made on the case docket indicating that the HSD has been filed with the court. 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.

- b. Pro se parties
  - i. Pro se parties shall submit to the clerk's office for filing a motion to treat a document as an HSD, the HSD sought to be filed, and a certificate of service in the form of two paper copies. These documents should be packaged as specified in paragraph 2.b.
  - ii. The filing party shall serve the proposed HSD on other parties as specified in paragraph 2.c.
  - iii. The court will issue an order on the motion and, if granted, an informational entry will be made on the case docket indicating that the HSD has been filed with the court. 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.

#### **4. Service of Highly Sensitive Court Orders**

If the presiding judge in a given matter determines that a court order contains highly sensitive information, the judge shall designate that order as an HSD. The clerk's office will file and maintain the order in a secure paper filing system or a secure standalone computer system that is not connected to any network and will serve paper copies of the order on the parties via mail, and will make a notation on the public docket that a court order was filed that date, but was designated as an HSD.

#### **5. Removal of Existing HSDs or Highly Sensitive Cases from the Court's Electronic Filing System**

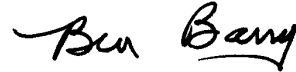
- a. Upon motion of a party or upon its own motion, the court may determine that a document, case, or any portion of it, that has been filed electronically is highly sensitive and direct that the HSD or case be removed from the court's electronic filing system and maintained by the clerk's office in a secure paper filing system or a secure standalone computer system that is not connected to any network.
- b. A party's motion to remove an HSD or highly sensitive case from the court's electronic filing system shall explain why such document or case is highly sensitive under the criteria set out in paragraph 1.a. above or why it should otherwise be subject to the heightened protection for HSDs.

This General Order shall become effective as of the date of this order and shall remain in effect until such time as the court orders otherwise.

**IT IS SO ORDERED.**

DATED: 1/19/2021

**FOR THE COURT**



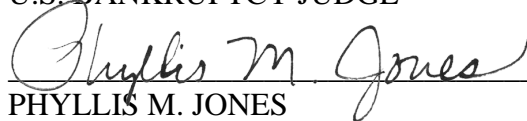
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BEN T. BARRY  
CHIEF U.S. BANKRUPTCY JUDGE



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RICHARD D. TAYLOR  
U.S. BANKRUPTCY JUDGE



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PHYLLIS M. JONES  
U.S. BANKRUPTCY JUDGE