

United States Court of Appeals for the Federal Circuit

ORDER

Procedures for the Filing, Service, and Management of Highly Sensitive Documents

In response to recent disclosures of widespread breaches of both private sector and government computer systems, the Federal Circuit finds, pursuant to 28 U.S.C. § 2071(e), that there is an immediate need to alter its rules and electronic filing procedures in order to allow parties to file certain highly sensitive documents outside of the court's electronic case filing system (CM/ECF).

IT IS ORDERED THAT:

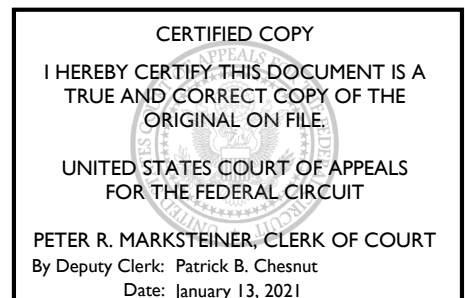
- (1) Subject to further changes as the circumstances may require, the attached procedures are adopted for the filing, service, and management of highly sensitive documents in and by this court.
- (2) The Clerk of Court is directed to provide public notice of this Order and to take any necessary and proper actions to implement these procedures.

FOR THE COURT

Jan. 13, 2021
Date


/s/ Sharon Prost
Sharon Prost
Chief Judge

Administrative Order No. 2021-04



**Procedures for the Filing, Service, and
Management of Highly Sensitive Documents**

(1) Highly Sensitive Documents

- (a) These procedures apply only to documents containing material that, due to its highly sensitive nature, requires a level of security greater than that provided through filing as confidential or under seal in CM/ECF.
- (b) While a document must be eligible for filing under seal or as confidential pursuant to Fed. Cir. R. 25.1(d) to be considered for classification as highly sensitive material, sealed and confidential filings in most civil cases in this court do not warrant highly sensitive designation under this order.
- (c) Documents not filed as highly sensitive documents in the originating proceedings generally are not considered highly sensitive documents on appeal.
- (d) A document is not considered highly sensitive merely because it contains personally identifiable information as defined by Fed. Cir. R. 25.1(d) or information supporting a motion or affidavit to proceed in forma pauperis under Fed. Cir. R. 24.

(2) Documents Designated in Originating Proceedings

- (a) At the time of filing any document containing material already receiving highly sensitive document protection in the originating proceeding, the party must submit a Certificate for Highly Sensitive Document Protection containing (a) the highly sensitive material, (b) the order or other authority treating the material as highly sensitive, and (c) the appellate document containing the highly sensitive material.

- (b) The party must file a confidential and a nonconfidential version of the Certificate and any attachments pursuant to the requirements of Fed. Cir. R. 25.1(e). Only the nonconfidential version is filed electronically; the confidential version of the Certificate must be filed in paper with the proposed highly sensitive document submitted in a separate, sealed envelope labeled “HIGHLY SENSITIVE DOCUMENT.”
 - (c) All parties must be served with a paper copy of the confidential version either by mail, commercial carrier, or in person.
 - (d) At the time of submitting the paper version of the Certificate for Highly Sensitive Document Protection as part of a brief, appendix, or petition, the filer must include the number of copies of the brief, appendix, or petition required by Fed. Cir. R. 25(c)(3).
- (3) **Documents Not Designated in Originating Proceedings**
- (a) A party seeking to have this court designate material as highly sensitive that has not already been so designated must file a Motion for Highly Sensitive Document Protection simultaneously with the appendix, brief, motion or other document containing the material, establishing why the material should be subject to heightened protections for highly sensitive documents beyond those afforded to sealed documents. The party must include the proposed document to be afforded highly sensitive protection along with the Motion.
 - (b) A Motion for Highly Sensitive Document Protection may be filed in this court when the highly sensitive nature of the material requires a level of security greater than that provided through sealing in CM/ECF and

- (i) there is a change in circumstances that warrants reconsideration of the need for highly sensitive document protection,
 - (ii) the issue of highly sensitive document protection could not have been considered in the originating proceeding,
 - (iii) the need for such protection arises in the first instance on appeal, or
 - (iv) the material is being filed for the first time on appeal and warrants such protection.
- (c) The party must submit a confidential and a nonconfidential version of the Motion and any attachments pursuant to the requirements of Fed. Cir. R. 25.1(e). Only the nonconfidential version is filed electronically; the confidential version of the motion must be filed in paper with the proposed highly sensitive document submitted in a separate, sealed envelope labeled “HIGHLY SENSITIVE DOCUMENT.”
- (d) All parties must be served with a paper copy of the confidential version either by mail, commercial carrier, or in person.
- (e) At the time of submitting the paper version of the Certificate for Highly Sensitive Document Protection as part of a brief, appendix, or petition, the filer must include the number of copies of the brief, appendix, or petition required by Fed. Cir. R. 25(c)(3).
- (4) Removing Documents from CM/ECF in Pending Cases**
- (a) Parties with pending, non-mandated cases as of the date of this Order seeking to designate already sealed or confidential filings as highly sensitive documents may file a “Motion to Remove Document from CM/ECF” establishing why the material should be subject to heightened protections for highly sensitive

documents beyond those afforded to sealed documents.

- (b) The party must file a confidential and a nonconfidential version of the Motion and attachments pursuant to the requirements of Fed. Cir. R. 25.1(e). Only the nonconfidential version is filed electronically; the confidential version of the Motion must be filed in paper with the proposed highly sensitive document submitted in a separate, sealed envelope labeled “HIGHLY SENSITIVE DOCUMENT.”
 - (c) All parties must be served with a paper copy of the nonconfidential version either by mail, commercial carrier, or in person.
- (5) **Removing Documents from CM/ECF in Closed Cases**
- (a) Parties with closed, mandated cases as of the date of this Order seeking to remove already sealed or confidential filings as highly sensitive documents may file a nonconfidential “Motion to Remove Document from CM/ECF” (i) identifying the docket entry number with proposed highly sensitive material and (ii) establishing why the material should be subject to heightened protections for highly sensitive documents beyond those afforded to sealed documents.
 - (b) The Clerk of Court is delegated the authority to act on the motion, which are procedural motions for purposes of Fed. Cir. R. 27(h).
- (6) **Handling of Highly Sensitive Material.** Upon receipt of any material designated or pending consideration of designation as containing highly sensitive material, the Clerk’s Office shall place the material under seal and store it in a secure paper filing system. The Clerk of Court and deputy clerks are prohibited from maintaining, storing, or transmitting any designated highly sensitive

document in digital format on a computer system connected to any network.

- (7) **Court Document Containing Highly Sensitive Material.** If a court opinion, order, or other document contains highly sensitive material, the document will be afforded the same protection afforded to highly sensitive documents filed by the parties, including filing in a secure paper filing system or a secure standalone computer system and service on the parties by mail.