



Quick Reference: Confidential Documents

This guide provides essential information for properly filing confidential and sealed documents in the U.S. Court of Appeals for the Federal Circuit in accordance with the Federal Circuit Rules of Practice and Electronic Filing Procedures.

1. Key Terminology

- **Confidential Material:** Documents containing information subject to a protective order or confidentiality restrictions (Fed. Cir. R. 25.1)
- **Sealed Material:** Documents with restricted access per court order (Fed. Cir. R. 25.1)
- **Nonconfidential Version:** Redacted version of a confidential document for public access (Fed. Cir. R. 25.1(e)(1)(B))

Note on Terminology: For purposes of these rules, documents filed as "confidential" are treated the same as documents filed "under seal" (Practice Notes to Fed. Cir. R. 25.1)

2. Two-Version Requirement

When filing any confidential document, you must file:

1. A **confidential version** that properly marks confidential material.
2. A **nonconfidential version** with appropriate redactions (Fed. Cir. R. 25.1(e)(1)).

3. Marking Requirements for Confidential Version

- Label "CONFIDENTIAL" on cover or first page (centered at top or in title).
- If confidentiality will expire, indicate on cover (e.g., "CONFIDENTIAL UNTIL [DATE]").
- Enclose confidential material in brackets or highlight it within the document.



- For appendices, include protective order text at beginning (before judgment/order appealed from) (Fed. Cir. R. 25.1(e)(1)(A)).

a. Bracketing Confidential Material

- Confidential information must be clearly identifiable in the confidential version (Practice Notes to Fed. Cir. R. 25.1).
- Brackets should be sized appropriately to ensure they are readily recognizable.
- Highlighting may be used as an alternative to brackets.
- If an entire page is confidential:
 - Include large brackets on the left and right margin of the page, or
 - Highlight the entire page, or
 - Use a clearly highlighted border surrounding the page.
- Ensure that highlighting will not obscure text or be confused with other identifiers elsewhere in the document (Practice Notes to Fed. Cir. R. 25.1).

b. Examples of Bracketing Confidential Material

- **Individual confidential item:**

The profit margin for the product is [12.5%], which exceeds industry standards.

- **Multiple words or phrases confidential:**

We conducted [testing at our Palo Alto facility] on [February 15, 2024], which revealed [unexpected results].



- **Confidential paragraph (using large brackets):**

[The company's proprietary formula includes the following components in these proportions: 25% component A, 15% component B, 35% component C, and 25% component D. This precise formulation provides superior performance compared to competitor products.]

- **Entire page confidential (notation at top and bottom):**

[CONFIDENTIAL PAGE BEGINS]

(entire page content)

[CONFIDENTIAL PAGE ENDS]

4. Marking Requirements for Nonconfidential Version

- Label "NONCONFIDENTIAL" on cover or first page (centered at top or in title).
- Include a legend on each redacted page stating material has been deleted.
- Provide general descriptors for redacted material (except in exhibits/appendices).
- Include a paragraph in table of contents describing nature of confidential material and page numbers.
 - If no table of contents, place this paragraph as first paragraph of document (Fed. Cir. R. 25.1(e)(1)(B)).

a. Examples of Redactions in Nonconfidential Version

- **Individual confidential item redacted:**

The profit margin for the product is [profit percentage], which exceeds industry standards.



- **Multiple words or phrases redacted:**

We conducted [testing location] on [testing date], which revealed [test results].

- **Confidential paragraph redacted:**

[CONFIDENTIAL MATERIAL REDACTED]

- **Entire page redacted (use a slip sheet):**

CONFIDENTIAL MATERIAL OMITTED

The material omitted on page 42 describes the circumstances of an alleged lost sale; the material omitted in the first line of page 43 indicates the dollar amount of an alleged revenue loss; the material omitted on page 44 indicates the quantity of the party's inventory and its market share.

- **Legend placement (Practice Notes to Fed. Cir. R. 25.1):**

- When a page redacts confidential information, the legend should appear in the margin of the page.
- If an entire page is redacted, a slip sheet may be included with the legend in the center of the sheet.
- If a consecutive range of entire pages is redacted, one slip sheet with a legend representing the redaction of that range of pages is sufficient.

5. Confidential Word Limitations

For motions, petitions, responses, replies, and briefs:

- **General Limit:** 15 unique words (including numbers) may be marked confidential.
- **Cases under 19 U.S.C. § 1516a or 28 U.S.C. § 1491(b):** 50 unique words may be marked confidential.
- Repeated confidential material does not count against the limit.



- Material quoted from previously filed documents does not count in responsive filings (Fed. Cir. R. 25.1(d)(1)).

6. Certificate of Confidential Material

- Required when filing confidential version of motion, petition, response, reply, or brief.
- Must include exact count of unique confidential words.
- Use Federal Circuit Form 31 (Fed. Cir. R. 25.1(e)(2)).

7. Electronic Filing Procedure

- File nonconfidential version first using appropriate document event.
- File confidential version using "Confidential Brief/Appendix or Joinder" or "Sealed/Confidential Document" event.
- Select related nonconfidential version when prompted.
- Upload confidential document.
- Complete filing by clicking Submit (Electronic Filing Procedures §§ IV.E, IV.J).

8. Service Requirements

- Confidential materials cannot be served through CM/ECF.
- Confidential materials must be served through alternative methods (mail, delivery, etc.)
- Proof of service must be attached to confidential filing.
- Service information on proof must match information in filing (Fed. Cir. R. 25(e)(3); Electronic Filing Procedures § IV.A.5).

9. Paper Copies

- Only submit paper copies of confidential versions (not nonconfidential versions).
- Follow quantity requirements in Federal Circuit Rule 25(c)(3).



- For **briefs and appendices** in initial consideration: 6 copies (3 for informally briefed cases).
- For **petitions for panel rehearing**: 3 copies.
- For **en banc petitions**: 13 copies (3 for unrepresented parties).
- For **briefs in en banc cases**: 26 copies (Fed. Cir. R. 25(c)(3)(E)).

10. Emergency Confidential Filings

- If confidential information is accidentally included in public filing, contact Clerk's Office immediately (during business hours: 202-275-8000 or 202-275-8055; after hours: 202-275-8049 and emergencyfilings@cafc.uscourts.gov) (Electronic Filing Procedures § IV.A.5(c)).

11. Highly Sensitive Material

- For material requiring greater protection than standard confidential filing:
 1. File Motion for Highly Sensitive Document Protection (nonconfidential version electronically).
 2. Submit confidential version in paper with proposed sensitive document in separate sealed envelope labeled "HIGHLY SENSITIVE DOCUMENT" (Electronic Filing Procedures § IV.F.1; Administrative Order 2021-04).

12. Common Pitfalls to Avoid

- Not filing both versions (confidential and nonconfidential) (Fed. Cir. R. 25.1(e)(1)).
- Exceeding confidential word limits without motion for waiver (Fed. Cir. R. 25.1(d)(3)).
- Missing Certificate of Confidential Material (Fed. Cir. R. 25.1(e)(2)).
- Attempting to serve confidential materials via CM/ECF (Fed. Cir. R. 25(e)(3)).



- Improper redaction methods that allow text recovery (Fed. Cir. R. 25.1(a)(3)).
- Including confidential information in public portions (Fed. Cir. R. 25.1(a)(3)).
- Using "Nonconfidential" or "Public" on the cover if there is no corresponding confidential version (Fed. Cir. R. 32(a)(2)).

13. Reference Materials

- Federal Circuit Rule 25.1 (Privacy and Confidentiality)
- Federal Circuit Rule 25(c)(3) (Paper Copies)
- Federal Circuit Rule 25(e) (Service of Documents)
- Electronic Filing Procedures IV.J (Confidential and Sealed Documents)
- Federal Circuit Form 31 (Certificate of Confidential Material)