

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

NOTICE OF ADOPTION OF STANDING ORDER 21-01

PLEASE TAKE NOTICE that the court has adopted Standing Order 21-01 implementing new procedures adopted by the Federal Judiciary for the filing of highly sensitive sealed documents in paper form or via a secure electronic device. These highly sensitive sealed documents will not be uploaded to CM/ECF. The new procedures respond to recent disclosures of wide-spread breaches of government and private sector computer systems.

Standing Order 21-01 sets forth this court's procedures for filing, serving, and maintaining highly sensitive sealed documents outside CM/ECF.

The Order is effective January 13, 2021, subject to revision in light of comments received. Interested parties may submit comments on or before March 12, 2021, to:

Patricia S. Connor, Clerk
U.S. Court of Appeals for the Fourth Circuit
1100 E. Main Street, Suite 501
Richmond, Virginia 23219

or via email to:
rulecomments@ca4.uscourts.gov

January 13, 2021
Date

s/ Patricia S. Connor
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Procedures for the Filing,	*	
Service, and Management of	*	Standing Order 21-01
Highly Sensitive Documents	*	

ORDER

The court adopts the following new procedures for filing, serving, and maintaining highly sensitive sealed material outside the court’s electronic case filing system (CM/ECF). Highly sensitive documents will be filed and served in paper form (or, if digital media, on a secure electronic device), in accordance with this Order, and will be maintained by the clerk’s office in a secure paper filing system or secure standalone computer system that is not connected to any network. Sealed documents that are not highly sensitive will be filed and served in accordance with established procedures under Local Rule 25(c) and will be maintained under seal in CM/ECF.

1. Highly Sensitive Documents

- a. Applications for search warrants, applications for electronic surveillance under 18 U.S.C. § 2518, and other documents filed as highly sensitive documents in the originating proceedings will be deemed highly sensitive documents on appeal. The initial designation of a document as highly sensitive is made in the originating court.

b. Presentence reports, pretrial release reports, pleadings related to cooperation in most criminal cases, social security records, administrative immigration records, other administrative records, sealed filings in many civil cases, and any documents not filed as highly sensitive documents in the originating proceedings generally are not considered highly sensitive documents on appeal.

2. **Certificate for Highly Sensitive Document Protection:** At the time of filing any appendix, brief, motion, or other document containing material afforded highly sensitive document protection in the originating proceedings, parties must file a “Certificate for Highly Sensitive Document Protection.” The certificate shall identify (i) the highly sensitive material, (ii) the order or other authority for treating the material as highly sensitive, and (iii) the appellate document containing the highly sensitive material. A paper copy of the certificate shall be filed with the highly sensitive document, and electronic filers shall also file the certificate in electronic form.

3. **Motion for Highly Sensitive Document Protection:** Motions for highly sensitive document protection should be presented and resolved during the course of the originating proceedings. A “Motion for Highly Sensitive Document Protection” may be filed in this court when (i) there is a change in circumstances that warrants reconsideration of the need for highly sensitive document protection, (ii) the need for such protection arises in the first instance on appeal, or (iii) additional material filed for the first time on appeal warrants such protection; and

when the highly sensitive nature of the material requires a level of security greater than that provided through sealing in CM/ECF. The materials that are the subject of the motion will be afforded highly sensitive document protection pending the court's disposition of the motion. A paper copy of the motion shall be filed with the highly sensitive document, and electronic filers shall also file the motion electronically.

4. Filing of Highly Sensitive Documents:

- a. Appendices: When highly sensitive material is included in the appendix, it must be segregated from other volumes of the appendix and filed in a separate, highly sensitive volume of the appendix.
- b. Briefs, Motions, and Other Documents: When highly sensitive material is disclosed in a brief, motion, or any document other than an appendix, multiple versions of the document must be filed: (i) a highly sensitive version with highly sensitive material highlighted and (ii) a public version with highly sensitive material redacted; in addition, (iii) a sealed version with sealed material highlighted and publicly sensitive material redacted must be filed if the document also discloses sealed material that is not highly sensitive.
- c. Marking of Highly Sensitive Documents: The first page of any appendix, brief, motion, or other document tendered or filed as a highly sensitive document must be conspicuously marked "HIGHLY SENSITIVE DOCUMENT," and the document must be placed in an envelope marked "HIGHLY SENSITIVE DOCUMENT."

d. Method of Filing: Parties shall file one paper copy of the highly sensitive document (or, if digital media, one secure electronic device), together with a paper copy of the related certificate or motion, in a sealed envelope marked “HIGHLY SENSITIVE DOCUMENT.” The court will order the filing of additional copies for oral argument or if otherwise needed by the court. Electronic filers must also file the related certificate or motion in electronic form.

5. Removal of Highly Sensitive Documents from CM/ECF:

a. A motion to remove a highly sensitive document from CM/ECF should be filed in the originating court in the first instance.

b. A “Motion to Remove Document from CM/ECF” may be filed in this court when (i) there is a change in circumstances that warrants reconsideration of the need for highly sensitive document protection, (ii) the need for such protection arises in the first instance on appeal, or (iii) additional material filed for the first time on appeal warrants such protection; and when the highly sensitive nature of the material requires a level of security greater than that provided through sealing in CM/ECF.

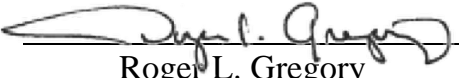
c. The court may, on its own motion, determine that a previously filed document is highly sensitive and direct that it be removed from CM/ECF.

6. Highly Sensitive Court Orders or Other Documents: If a court opinion, order, or other document discloses highly sensitive information, 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 secure standalone computer system and service on the parties via mail.

IT IS SO ORDERED.

FOR THE COURT



Roger L. Gregory
Chief Judge

Dated: January 13, 2021