



United States District Court

DISTRICT OF SOUTH DAKOTA

LR 49.1 SERVING AND FILING DOCUMENTS INCLUDING HIGHLY SENSITIVE DOCUMENTS

- A. What constitutes filing/official record.** Electronic transmission of a document to the Electronic Filing System together with the transmission of a Notice of Electronic Filing from the court constitutes filing of the document for all purposes of the local rules of this court and the Federal Rules of Civil Procedure and constitutes entry of the document on the docket kept by the clerk of court under Fed. R. Civ. P. 58 and 79. When a document has been filed electronically, the official record is the electronic document as stored by the court and is deemed filed at the date and time stated on the Notice of Electronic Filing from the court. The party filing the document is bound by the document as filed.
- B. What constitutes an electronic signature.** In addition to the requirements contained in Rule 49(b)(4) of the Federal Rules of Criminal Procedure, the name of the filing user under whose login and password the documents are submitted must be preceded by a “/s/” and typed in the space where the signature would otherwise appear unless a facsimile of the filing user’s signature appears in the signature block.
- C. Duty to protect login and password.** No filing user or other person may knowingly permit a filing user’s login and password to be used by someone other than an authorized agent of the filing user. If they learn that their password has been compromised, they must immediately notify the clerk. Attorneys may be subject to sanctions for failure to comply with this provision.
- D. Documents requiring the signature of more than one party.** Documents requiring signatures of more than one party may be electronically filed either by (a) submitting a scanned document containing all necessary signatures; or (b) in any other manner approved by the court. When filing documents that require signatures from other parties, it is not permissible to insert a “/s/” for another person’s signature.
- E. Restricted Hyperlinks.** Because a website address within a court filing becomes a hyperlink to the internet location upon filing in the CM/ECF system, counsel must redact from any filed documents any website address that directs the court to a website that contains pornography or personal identifiers. After filing the redacted document, counsel must provide an unredacted version to the clerk of court for filing under seal.
- F. Filing Documents outside of CM/ECF.** Highly sensitive documents may be filed outside of the court’s Electronic Filing System.

1. **Highly Sensitive Documents.** A Highly Sensitive Document (HSD) is a document or other material that contains sensitive, but unclassified, information that warrants exceptional handling and storage procedures to prevent significant consequences that could result if such information were obtained or disclosed in an unauthorized way. Although frequently related to law enforcement materials, especially sensitive information in a civil case could also qualify for HSD treatment.

- a. **Examples of HSDs:** Examples include *ex parte* sealed filings relating to: national security investigations, cyber investigations, and especially sensitive public corruption investigations; and documents containing a highly exploitable trade secret, financial information, or computer source code belonging to a private entity, the disclosure of which could have significant national or international repercussions.
- b. **Exclusions:** Most materials currently filed under seal do not meet the definition of an HSD and do not merit the heightened protections afforded to HSDs. The form or nature of the document, by itself, does not determine whether HSD treatment is warranted. Instead, the focus is on the severity of the consequences for the parties or the public should the document be accessed without authorization. Most presentence reports, pretrial release reports, pleadings related to cooperation in criminal cases, social security records, administrative immigration records, applications for search warrants, interception of wire, oral, or electronic communications under 18 U.S.C. § 2518, and applications for pen registers, trap, and trace devices would not meet the HSD definition.

Any dispute as to whether a document is an HSD will be resolved by the presiding judge or, when no presiding judge is assigned, the Chief Judge.

2. **Motion Required.** A represented or pro se party must file a motion to treat a document as an HSD and a proposed order in the same manner as a motion to file under seal pursuant to D.S.D. Civ. LR 7.1 A and Crim. LR 47.1 B. The motion and proposed order must state the duration of the HSD designation or whether the HSD designation should be permanent. The motion must explain why the proposed document constitutes an HSD under paragraph F.1 or why it should otherwise be filed without revealing the highly sensitive information contained within the HSD.

- a. The filing party must deliver to the clerk's office where the presiding judge is chambered two paper copies of the motion and HSD sought be filed along with a certificate of service.

These documents must be submitted in a sealed envelope marked “HIGHLY SENSITIVE DOCUMENT” and marked with the applicable case number, attorney’s name, street address, telephone number, and email address. Upon receipt, the clerk’s office will make an informational docket entry that a motion to treat a document as an HSD has been filed.

- b. Unless being submitted as an ex parte filing, the filing party must serve the proposed HSD on the other parties by any manner specified in Criminal Rule 49(a), except for service via the court’s Electronic Filing System.
- c. If the court grants the motion, 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.

3. Service of HSD Orders. The clerk’s office will serve paper copies of the order on the parties via mail.