

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JOHN B., et al.)	
individually and on behalf of all others similarly)	
situated,)	
)	
Plaintiffs,)	
v.)	3:98CV0168
)	JUDGE HAYNES
DAVE GOETZ, Commissioner,)	
Tennessee Department of Finance and Administration,)	
et al.)	
)	
Defendants.)	

ORDER

Before the Court is the Defendant's emergency motion (Docket Entry No. 1075) seeking clarification and reconsideration of the Order of November 15, 2007 (Docket Entry No. 1070). Plaintiffs have filed a response thereto (Docket Entry No. 1076). For the reasons set forth below, the motion is **GRANTED** in part and **DENIED** in part.

The Court's Order is clear and addresses the Court's serious concerns about the Defendants' repeated failures to ensure the preservation of existing electronically stored information ("ESI"). The Court entered an earlier Order predicated on the parties' experts' agreement to ensure preservation of ESI in a less intrusive manner (Docket Entry No 789, Order), but the Defendants breached that agreement and violated that Order. The parties' experts had previously discussed making forensic copies and were thus aware of what that process entails. See Docket Entry No. 786, Transcript at pp. 21-27.

Mr. Thomas Tigh is a highly skilled and experienced computer expert who has exhibited reasonableness in all of his appearances before the Court. Mr. Hedges is a former magistrate judge and is well experienced in discovery and ESI issues. The Defendants' suggestion that these persons

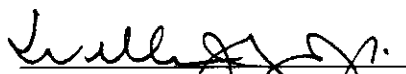
will be disruptive in making forensic copies of the relevant computers' hard drives is at best disingenuous. The Court has some experience with forensic copying of computers and has never encountered any disruption or difficulties. The Plaintiffs' motion for contempt addresses the Defendants' past conduct. The Court does not need a motion from the Plaintiffs to have its Orders executed.

To clarify what was contemplated in the earlier Orders and the November 15, 2007 Order: Mr. Tigh shall make forensic images of all relevant computers under the oversight of Mr. Hedges, the Monitor and while accompanied by the U.S. Marshal or his designee. The U.S. Marshal or his designee shall assume custody of all forensic images made by Mr. Tigh from each computer as soon as they are completed. As soon as practicable, the U.S. Marshal or his designee shall deliver these forensic copies directly to the Court where they will be maintained under seal. These forensic copies shall not be reviewed by any person pending further Order of the Court. Mr. Tigh shall conduct imaging in a manner that is minimally intrusive on state's computer operations and the work of the key custodians. Mr. Tigh shall image only those computers (including detachable media) that key custodians have used for receiving, sending or storing work-related ESI. For privately owned computers of key custodians with relevant ESI that are not located on state property, the U.S. Marshal or his designee shall arrange with state security personnel to go to the locations where such computers are located and shall remove the computers to a state office where Mr. Tigh can image them under the Monitor's oversight. State security personnel shall be responsible for returning any such computers to their owners after completing the imaging process. To this extent, the Defendants' motion is **GRANTED**, but the motion is otherwise **DENIED**.

The Court's November 15, 2007 Order shall be executed forthwith

It is so **ORDERED**.

ENTERED the 19th day of November, 2007.


WILLIAM J. HAYNES, JR.
United States District Judge