

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

LARRY KLAYMAN

Plaintiff,

v.

HILLARY RODHAM CLINTON,

and

WILLIAM JEFFERSON CLINTON,

and

THE CLINTON FOUNDATION

a/k/a The William J. Clinton Foundation

a/k/a The Bill, Hillary & Chelsea Clinton Foundation

Defendants.

Civil Action No.
9:15-cv-80388-DMM

PROPOSED ORDER

THIS CAUSE is upon the Plaintiff's Motion for Prejudgment Attachment of Computer File Server. The Plaintiff asks that the private computer file server used to process emails for the conduct of official business of the then Secretary of State, Defendant Hillary Clinton, off-site at her home be produced in discovery immediately as a "tangible thing" under Rule 34 and/or attached, in order to preserve and obtain the evidence that may still be residing on the hard drive data storage device of the computer file server (or email server).

Whereas, the Plaintiff seeks data from the computer file server (email server) maintained by Secretary Clinton, possibly together with her husband Bill Clinton used for operating her electronic message (email) account, address, and/or communications, believed to be housed

(based on its published IP electronic address) in Chappaqua, New York, because the Defendant Hillary Clinton admits to using that server to process and operate the email address and email account which she used for official U.S. Government business while Secretary of State, and,

Whereas, the Court is notified that the Defendant, by her counsel, asserts that all the contents of the hard drive of the computer file server have been deleted, but the Plaintiff believes that the data might still be recovered at least in part or at the least forensic evidence of spoliation of evidence would be detected and/or is unwilling to accept the Defendants' counsel's assertion. In any event, any burden to the Defendant or potential disruption is substantially reduced where the Defendant claims that she herself has deleted all the data on the computer file server. Defendant therefore does not claim any continuing need for the data on the computer file server, claiming that she deleted all of it. And,

Whereas, Rule 34 of the Federal Rules of Civil Procedure permits both requests for the production of "tangible things" in addition to the usual request for documents as well as entry onto land to test, inspect, or copy the real estate and/or operations on the land, and

Whereas, the Plaintiff argues several alternative grounds for his motion, including the seizure of specific things under Rule 64 of the Federal Rules of Civil Procedure ("FRCP"), an expedited entry and production of tangible things pursuant to FRCP Rule 34(a)(1)(B) and Rule 34(b)(2)(A), an *ex parte* temporary restraining order, and/or order of the Court's inherent authority.

Upon consideration of Plaintiff's motion and the Court being fully apprised in the premises,

IT IS ORDERED that --

- A. the time is hereby shortened under Rule 34 to allow for immediate production of the file server hard drive(s) as a tangible thing that under Rule 34 may be produced in discovery to the requesting party.
- B. the Plaintiff's motion is granted for entry onto land where the computer file server is currently located under FRCP Rule 34 to inspect and retrieve the computer file server and its hard drive(s).
- C. the parties are directed to confer at once and agree upon a time within the next five (5) business days and also agree upon a method for the entry onto land where the computer file server is currently located the and also agree upon who will perform such task. If the parties are unable to reach agreement within 48 hours, the Court directs that the U.S. Marshall's service retrieve the computer file server and its hard drive(s) from the Defendant's residence or wherever it may be found.
- D. the computer file server and its hard drive shall be taken into custody under the impartial authority of the Court and thereupon be made available to the parties' chosen computer forensic expert(s) or, upon application to the Court, an expert appointed as the Court's expert funded at the parties' expense.
- E. any contents or data of the computer file server which may be recovered shall be initially placed under seal, but any data or emails or other records which are responsive to any well-grounded Rule 34 request for the production of documents – including any forensic clues or other evidence of spoliation of evidence such as the technique by which data was deleted – shall be produced to the Plaintiff in conformity to normal procedures under Rule 34, while any emails, data, or records that are truly in fact both private and non-responsive to discovery in this case shall be either returned to the Defendants or destroyed at the Defendants election. Any emails or records that are recovered which the Court determines reflect, contain, or embody official U.S. Government business that were not already turned over to the U.S. Department of State shall be entrusted to the Department's proper authorities for normal processing of records and archives, including those held not responsive to Plaintiff's proper discovery here.
- F. the Defendants or any other properly-authorized party having a lawful interest in the computer file server may make a copy of the original hard drive held in the custody of the Court to permit a properly-authorized party to resume operations of a replacement computer file server using the data transferred onto a new, replacement hard drive copied from the original.
- G. nothing in this action or procedure ordered is intended to hinder access to the computer file server hard drives by any other authority or litigation party to the extent otherwise justified by law and the Federal Rules of Civil Procedure.

- H. the computer file server hard drive is hereby attached pursuant to Rule 64.
- I. it is hereby ordered that a forensic computer expert under the Court's impartial authority shall take immediate possession of the computer file server.

Signed this ___ day of _____, 2015.

Hon. Donald M. Middlebrooks
United States District Judge

Dated: April 9, 2015

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