

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III

HENRY HODGES)

Plaintiff,)

vs.)

Case No. 22-1440-III)

LISA HELTON, in her official capacity)
as Tennessee’s Interim Commissioner)
of Correction,)

Dr. KENNETH WILLIAMS, in his)
Official capacity as Asst. Commissioner)
Of Clinical Services, Chief Medical)
Officer Tennessee Department of)
Correction,)

Defendants.)

CHANCELLOR’S PROTECTIVE ORDER

In light of the dispute between the parties and to facilitate the exchange of documents between the parties, the Court hereby ORDERS the following:

1. **Scope.** All documents, videos, and photographs produced in the course of discovery, including all responses to discovery requests, all deposition testimony and exhibits, other materials which may be subject to restrictions on disclosure for as contemplated by contemplated by Tenn. Code Ann. § 10-7-504 *et. seq.* derived directly therefrom, including documents obtained by third-party subpoenas, (hereinafter collectively “documents”), and all other documents outlined in the categories of materials as set forth in the Court’s **Order to Unseal Certain Portions of the Judicial Records, To Conduct Further In Camera Review Other Portions of the Judicial Record That Remain Under Seal** shall be subject to this Order concerning confidential information as set forth below.

2. **Form and timing of designation.** A party may designate documents as confidential and restricted in disclosure under this Order by placing or affixing the words CONFIDENTIAL or ATTORNEYS EYES ONLY on the document in a manner that will not interfere with the legibility of the document. Documents shall be designated CONFIDENTIAL or ATTORNEYS EYES ONLY prior to or at the time of the production or disclosure of the documents. When electronically stored information is produced which cannot itself be marked with the designation CONFIDENTIAL or ATTORNEYS EYES ONLY, the physical media on which such electronically stored information is produced shall be marked with the applicable designation. The party receiving such electronically stored information shall then be responsible for labeling any copies that it creates thereof, whether electronic or paper, with the applicable designation. By written stipulation, the parties may agree temporarily to designate original documents that are produced for inspection as CONFIDENTIAL or ATTORNEYS EYES ONLY, even though the original documents being produced have not themselves been so labeled. All information learned in the course of such an inspection shall be protected in accordance with the stipulated designation. The copies of documents that are selected for copying during such an inspection shall be marked CONFIDENTIAL or ATTORNEYS EYES ONLY, as required under this Order, and thereafter the copies shall be subject to protection under this Order in accordance with their designation. The designation CONFIDENTIAL or ATTORNEYS EYES ONLY does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order.

3. **Documents designated CONFIDENTIAL.** A disclosing party may designate documents as CONFIDENTIAL or for ATTORNEYS EYES ONLY upon making a good faith determination that the documents contain information protected from disclosure by statute. The parties shall not generally designate an entire production as confidential. Only such documents that implicate confidential information as outlined by statute shall be so designated. Public records

and other information or documents that are publicly available may not be designated as CONFIDENTIAL.

4. **Depositions.** Deposition testimony shall be deemed CONFIDENTIAL or ATTORNEYS EYES ONLY, only if contemporaneously designated as such on the record or within 30 days after the deposition. The parties shall not generally so designate an entire deposition. Such designation shall be specific as to the portions of the transcript or any exhibit to be designated as CONFIDENTIAL or ATTORNEYS EYES ONLY. Thereafter, the deposition transcripts and any of those portions so designated shall be protected as CONFIDENTIAL or ATTORNEYS EYES ONLY, pending objection, under the terms of this Order.

5. **Protection of CONFIDENTIAL and ATTORNEYS EYES ONLY material.**

- a. **General Protections.** Documents designated CONFIDENTIAL or ATTORNEYS EYES ONLY under this Order shall not be used or disclosed by the parties, counsel for the parties, or any other persons identified in ¶ 5(b) for any purpose whatsoever other than to prepare for and to conduct discovery and trial in this action and the Related Actions,¹ including any appeal thereof.
- b. **Limited Third-Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any CONFIDENTIAL documents to any third person or entity except as set forth in subparagraphs (i)-(v). Subject to these requirements, the following categories of persons may be allowed to review documents that have been designated CONFIDENTIAL:
 - i. **Counsel.** Counsel for the parties and employees and agents of counsel who have responsibility for the preparation and trial of the action;
 - ii. **Parties.** Parties and employees of a party to this Order;
 - iii. **Court Reporters and Recorders.** Court reporters and recorders engaged for

depositions;

- iv. Consultants, Investigators and Experts. Consultants, investigators, or experts (hereinafter referred to collectively as “experts”) employed by the parties or counsel for the parties to assist in the preparation and trial of this action or proceeding, but only after such persons have completed the certification contained in **Attachment A**, Acknowledgment of Understanding and Agreement to Be Bound; and
- v. Others by Consent. Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall execute the certification contained in **Attachment A**, Acknowledgment of Understanding and Agreement to Be Bound.

The parties and counsel for the parties shall not disclose or permit the disclosure of any ATTORNEYS EYES ONLY documents to any third person or entity except as set forth in subparagraphs (i), (iii), (iv), and (v) above, as well as to specifically designated in-house counsel or party representative(s) whose assistance is reasonably necessary to the conduct of the litigation and who agree to be bound by the terms of the Order.

- c. Control of Documents. Counsel for the parties shall take reasonable and appropriate measures to prevent unauthorized disclosure of documents designated as CONFIDENTIAL or ATTORNEYS EYES ONLY pursuant to the terms of this Order. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of one year after

dismissal of the action, the entry of final judgment, and/or the conclusion of any appeals arising therefrom.

- d. Copies. Prior to production to another party, all copies, electronic images, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as “copies”) of documents designated as CONFIDENTIAL or ATTORNEYS EYES ONLY under this Order, or any individual portion of such a document, shall be affixed with the designation CONFIDENTIAL or ATTORNEYS EYES ONLY if those words do not already appear on the copy. All such copies shall thereafter be entitled to the protection of this Order.

6. **Inadvertent production.** Inadvertent production of any document or information without a designation of CONFIDENTIAL or ATTORNEYS EYES ONLY shall be governed by Tennessee Rule of Civil Procedure 26.02(5).

7. **Filing of documents under seal.** If a party, in good faith, determines that any materials designated as CONFIDENTIAL or ATTORNEYS EYES ONLY provided by a designating Party are relevant and necessary to any motion, brief, memoranda, pleading, dispute, or issue before the Court, it shall provide the designating Party with seven (7) days advance notice of its intention to file the CONFIDENTIAL or ATTORNEYS EYES ONLY material. Within three (3) days of providing the designating Party with a notice of intention to file CONFIDENTIAL or ATTORNEYS EYES ONLY material, counsel shall hold a meet-and-confer in a good faith effort to come to an agreement on redaction of CONFIDENTIAL or ATTORNEYS EYES ONLY material. If counsel cannot come to an agreement, it shall be the designating Party’s burden to file a motion to seal and for *in camera review* of the CONFIDENTIAL or ATTORNEYS EYES ONLY material within seven (7) days of the Parties’ meet-and-confer and must promptly seek to have the motion resolved by the Court. Unless otherwise agreed by the designating Party, NO

CONFIDENTIAL or ATTORNEYS EYES ONLY materials shall be filed while awaiting the designating Party's motion to seal or the Court's ruling on the motion to seal. Rather, if a filing must be made prior to the designating Party's motion to seal or the Court's ruling on the same, then the filing Party must redact all CONFIDENTIAL or ATTORNEYS EYES ONLY material, and advise the Court that un-redacted versions of the documents or information will be provided upon disposition of the motion to seal.

8. **Challenges by a party to designation as confidential.** Any CONFIDENTIAL or ATTORNEYS EYES ONLY designation is subject to challenge by any party or non-party with standing to object (hereinafter "party"). Before filing any motions or objections to a confidentiality designation with the Court, the objecting party shall have an obligation to meet and confer in a good faith effort to resolve the objection by agreement. If agreement is reached confirming or waiving the CONFIDENTIAL or ATTORNEYS EYES ONLY designation as to any documents subject to the objection, the designating party shall serve on all parties a notice specifying the documents and the nature of the agreement.

9. **Action by the Court.** Applications to the Court for an order relating to any documents designated CONFIDENTIAL or ATTORNEYS EYES ONLY shall be by motion and in accordance with the Local Rules or any other procedures set forth in this Court's standing Orders or other relevant Orders. Nothing in this Order or any action or agreement of a party under this Order limits the Court's power to make any Orders that may be appropriate with respect to the use and disclosure of any documents produced or use in discovery or at trial. All applications to the Court for such orders shall be filed for *in camera review*. The documents and materials which are the subject of such applications shall be hand delivered to Chambers via the Court's clerk. No such materials for determination shall be filed with the Court or made a part of the judicial record prior to a ruling from this Court.

10. **Use of confidential Documents or information at trial.** All trials are open to the public. Absent Order of the Court, there will be no restrictions on the use of any document that may be introduced by any party during the trial. If a party intends to present at trial CONFIDENTIAL or ATTORNEYS EYES ONLY documents or information derived therefrom, such party shall provide advance notice to the other party on the day of disclosure of the parties' exhibit lists or at least five (5) days before the commencement of trial, whichever is sooner, by identifying the documents or information at issue as specifically as possible (i.e., by Bates number, page range, deposition transcript lines, etc.) without divulging the actual CONFIDENTIAL documents or information. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at trial.

11. **Obligations on conclusion of litigation.**

- a. **Order remains in effect.** Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of judgment not subject to further appeal.
- b. **Return of documents.** Within thirty days after dismissal or entry of final judgment not subject to further appeal, all documents treated as CONFIDENTIAL or ATTORNEYS EYES ONLY under this Order shall be returned to the producing party unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; (2) the parties agree to destruction in lieu of return; or (3) as to documents bearing the notations, summations, or other mental impressions of the receiving party, that party elects to destroy the documents and certifies to the producing party that it has done so for this reason. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including an index which refers or relates to information designated CONFIDENTIAL or ATTORNEYS EYES ONLY, so long as that work product

does not duplicate verbatim portions of the text or images of confidential documents. This work product shall continue to retain its designation under this Order.

12. **Return of documents filed under seal.** After dismissal or entry of final judgment not subject to further appeal, the Clerk may elect to return to counsel for the parties or, after notice, destroy documents filed or offered at trial under seal or otherwise restricted by the Court as to disclosure.

13. **Order subject to modification.** This Order may be subject to modification by the Court on its own motion or on motion of a party or, for good cause, by the parties or any other person with standing concerning the subject matter.

14. **No prior judicial determination.** This Order is for the purpose of facilitating discovery between the parties. Nothing herein shall be construed or presented as a judicial determination that any documents or information designated CONFIDENTIAL or ATTORNEYS EYES ONLY by counsel or the parties is subject to protection under the Tennessee Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

15. **Persons bound.** This Order shall take effect when entered and shall be binding upon all counsel and their law firms, the parties, and persons made subject to this Order by its terms.

IT IS SO ORDERED.

/s/ P'Ashea L. Myles
CHANCELLOR P'ASHEA L. MYLES

ATTACHMENT A

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE TWENTIETH
JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III**

HENRY HODGES)	
)	
Plaintiff,)	
)	
vs.)	Case No. 22-1440-III
)	
LISA HELTON, in her official capacity as Tennessee's Interim Commissioner of Correction,)	
)	
Dr. KENNETH WILLIAMS, in his Official capacity as Asst. Commissioner Of Clinical Services, Chief Medical Officer Tennessee Department of Correction,)	
)	
Defendants.)	

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Protective Order dated _____ in the above-captioned action, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of Chancery Court for Davidson County, Tennessee, at Nashville in matters relating to the Protective Order and understands that the terms of the Protective Order obligate him/her to use documents designated CONFIDENTIAL or ATTORNEYS EYES ONLY in accordance with the Order solely for the purposes of the above-captioned action or Related Actions, and not to disclose any such documents or information derived directly therefrom to any other person, firm or concern.

The undersigned acknowledges that violation of the Protective Order may result in penalties for contempt of court.

Name: _____
Job title: _____
Employer: _____
Business address: _____

Date: _____ Signature: _____

cc: by U.S. Mail, fax, or e-filing as applicable to:

Kelley J. Henry
Amy Dawn Harwell
Richard Lewis Tennent
Scott Sutherland
Dean S. Atyia
Steven J. Griffin
John R. Glover
Paul R. McAdoo
Daniel A. Horwitz
Melissa K. Dix
Lindsay E. Smith