

JILLIAN POWELL, MARCH 27, 2009

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

JOHN WARD, JR.,	*	
Plaintiff,	*	
VS.	*	CIVIL ACTION NO.:
CISCO SYSTEMS, INC. AND RICK	*	
FRENKEL,	*	
Defendants.	*	08-4022

ORAL VIDEOTAPED DEPOSITION OF
JILLIAN POWELL

ANSWERS AND DEPOSITION OF JILLIAN POWELL, produced as a witness at the instance of the Plaintiff, taken in the above-styled and -numbered cause on the 27th day of March, 2009, A.D., beginning at 10:38 a.m., before Kelly Hassell, a Certified Shorthand Reporter in and for the State of Texas, in the offices of Baker Botts, L.L.P., located at 2001 Ross Avenue, Suite 1100, Dallas, Texas, in accordance with the Federal Rules of Civil Procedure and the agreement hereinafter set forth.

Esquire Deposition Services, LLC
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1 Q Okay. So in your practice, it's usually the
2 attorney that calls the court clerk?

3 A If there's a problem filing, yes.

4 Q Okay. If an attorney asks you to do it, would
5 you hesitate to call the court clerk if it was directed by
6 an attorney?

7 A The situation would have -- it would depend on
8 the situation.

9 Q So let's just say you filed a pleading when you
10 were working with Mr. Pankratz and the pleading came back
11 and it had some deficiency and Mr. Pankratz said,
12 Ms. Powell, I'm really busy. I've got a mediation today.
13 Can you call the court clerk and see what's wrong with this
14 filing; would you do that?

15 A I still would probably not do that, no.

16 Q Why?

17 A Well, it really -- these are -- these are
18 circumstances that I honestly would have to be in the
19 situation. It's hard -- almost kind of hard to -- it would
20 be hard to say what I would do in that situation because I
21 haven't been in that situation.

22 Q Okay. Well, let's talk a minute about the
23 complaint that was filed in the ESN versus Cisco case.
24 Mr. Pankratz asked you to call the court clerk, right?

25 A Yes.

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1 Q To ask what had happened with that filing, right?

2 A Yes.

3 Q And you didn't have a problem calling the court
4 clerk to ask them those questions?

5 A No.

6 Q And that was at his direction, right?

7 A Yes.

8 Q Is there anything in the local rules that you're
9 aware of that prohibits you from calling the court clerk?

10 A No.

11 MS. PEDEN: Gentlemen, is this a good time
12 for a break?

13 MR. CHEAVENS: Sure.

14 MS. PEDEN: Okay.

15 MR. BABCOCK: Sure.

16 MS. PEDEN: Take a 10-minute break.

17 THE VIDEOGRAPHER: We are off the record.
18 The time is 11:37 a.m.

19 (Break was taken.)

20 THE VIDEOGRAPHER: We are back on the
21 record. The time is 12:04 p.m. This is the beginning of
22 Tape 2.

23 MS. PEDEN: Thank you.

24 Q (BY MS. PEDEN) Welcome back, Ms. Powell. Do you
25 understand that you're still under oath?

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1 got off the telephone with Mr. Pankratz?

2 A I called the clerk of the court in the Eastern
3 District of Texas.

4 Q Okay. What time of day was that?

5 A I don't remember.

6 Q Do you know if it was before lunch?

7 A I don't remember.

8 Q Do you have any estimate?

9 A No.

10 Q Why did you call the clerk's office in the
11 Eastern District of Texas?

12 MR. CHEAVENS: Instruct her not to answer to
13 the extent if the answer would require disclosure of a
14 communication with other Baker Botts lawyers or staff or
15 the client.

16 Can you answer the question?

17 THE WITNESS: I cannot answer the question.

18 MR. CHEAVENS: Okay.

19 Q (BY MS. PEDEN) When you say that you called the
20 court's -- the clerk's office in the Eastern District of
21 Texas, what division did you call?

22 A Beaumont Division quality control clerk.

23 Q Okay. What is a quality control clerk?

24 A They're the clerks that, after the beginning of
25 each morning, they go through all the -- I believe what

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1 they do is they check every filing that was made the day
2 before for any discrepancies or deficiencies and they are
3 also the ones that are most comfortable with the logistics
4 of filing and -- like just the general facts of the filing.

5 Q Beaumont.

6 And who did you talk to in Beaumont?

7 A I -- I think her name was Rhonda.

8 Q Would that be Rhonda LaFitte?

9 A Yes.

10 Q If you want information about a filing after it's
11 been filed, do you have to call the -- the court clerk?

12 A It depends on the information we're looking for.

13 Q So if somebody said to you, I called Rhonda
14 LaFitte because that's the person that you have to call
15 once anything is filed, would you know what they were
16 talking about?

17 A Yes.

18 Q And what would that be?

19 MR. BABCOCK: I got a call 10 minutes ago.
20 Carry on.

21 MR. CHEAVENS: Do you want to take a -- why
22 don't we take a break.

23 MS. PEDEN: Could I have her answer my
24 question, please?

25 MR. CHEAVENS: Yeah. Yeah. Go ahead. Go

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1 sheet or the JS44 had been received earlier and that it had
2 been logged?

3 MR. BABCOCK: Before you answer that
4 question, I believe you're reading from a privileged
5 document in another case, Ms. Peden; so I'm going to object
6 to you doing that. That's a document that you're not
7 supposed to use in this litigation.

8 MS. PEDEN: Well, Mr. Babcock, I'm trying to
9 ascertain the facts from this witness and she's having a
10 difficult time remembering the facts and I think the fact
11 of what she spoke with and what she learned from the
12 third-party clerk is not privileged.

13 MR. BABCOCK: The protective order in the
14 other case specifically says that you're not to allow --
15 you're not allowed to use documents produced in that case
16 subject to the protective order in other litigation, and
17 that's exactly what you're doing. I don't have any problem
18 with your questioning this witness about her recollection
19 of conversations with the clerk. I do have a problem with
20 you using a privileged document in another case.

21 Q (BY MS. PEDEN) Ms. Powell, did you discuss the
22 civil cover sheet, the JS44, in the ESN versus Cisco case
23 with Ms. LaFitte?

24 A I don't remember.

25 Q Did you understand that the court's office had --

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1 or the clerk's office had received the civil cover sheet
2 before the complaint was filed?

3 A I believe that's -- the clerk had mentioned that
4 the complaint -- or the summons had been received, yes.

5 Q And did the clerk mention that the civil cover
6 sheet had been received earlier?

7 A She had -- she had mentioned that it had been
8 received. I can't remember earlier.

9 Q Did she mention that it had been received before
10 the complaint was filed?

11 A I can't recall exactly.

12 Q Do you remember if the information that you
13 received about the civil cover sheet from Ms. LaFitte was
14 consistent with the court's procedures that we were looking
15 at earlier today about receiving a civil cover sheet,
16 logging it and then having 24 hours to file the complaint?

17 A Can you ask that again?

18 Q Yeah. So earlier today we were looking at the
19 procedure, the new procedure for the filing of a complaint;
20 do you remember that document?

21 A Yes.

22 Q Okay. And we were looking at the procedure that
23 you could E-mail to the court clerk a civil cover sheet,
24 and that you had 24 hours to file the complaint; do you
25 remember that?

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1 A Yes.

2 Q And my question is, the information that you
3 received from Ms. LaFitte, was it consistent with that
4 court practice?

5 A I don't know the exact details of when -- I can't
6 remember when she said it was received; so I don't know if
7 that was consistent.

8 Q Do you remember if she said it was received
9 before the complaint was filed?

10 A Yes.

11 Q Did Ms. LaFitte tell you that the civil cover
12 sheet had been filed?

13 A I can't remember exactly.

14 Q If that were the case, if the civil cover sheet
15 had been received by the Court and the Court used it to
16 follow those procedures and set up a case file, but the
17 complaint wasn't filed until later that night, would that
18 explain why -- why there was -- why the complaint wasn't
19 available online?

20 MR. BABCOCK: Object to the form.

21 A I feel like we're getting into court logistics
22 that I don't know all the details of within the clerk's --
23 within the court system from my end.

24 Q (BY MS. PEDEN) Okay. So my question is, we were
25 looking at the procedure earlier today about how you could

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1 privileged and the witness is having a hard time
2 recollecting the conversation and I think that document
3 would help her refresh her recollection and move things
4 along.

5 MR. CHEAVENS: The problem is it's under the
6 protective order.

7 Q (BY MS. PEDEN) Ms. Powell, when you talked to
8 Ms. LaFitte, did you discuss the fact that ESN's attorneys
9 had contacted the clerk's office?

10 A She mentioned that they had contacted the clerk's
11 office.

12 Q Did she tell you that ESN's counsel contacted the
13 clerk's office to explain that they had actually filed the
14 complaint after midnight?

15 A She said they had completed the filing after
16 midnight.

17 Q And did you understand that ESN's counsel had
18 called the clerk's office to ask about the docket entry?

19 A I can't remember.

20 Q But you understood that ESN's counsel had called
21 to ask the court clerk about the same filing that you were
22 calling to ask the court clerk about; is that right?

23 A Yes.

24 Q Did Ms. LaFitte tell you who called the clerk's
25 office from ESN's side?

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1 Q Did you discuss that with her at all?

2 A I don't remember.

3 Q Did -- did Ms. LaFitte tell you that the
4 complaint had been altered in any way?

5 A I don't remember. No, I don't remember.

6 Q Okay. I know this was a long time ago.

7 A Yeah.

8 Q So what you do remember of your conversation with
9 Ms. LaFitte is that she explained that the banner had
10 changed; is that right?

11 A That's part of it, but I don't remember all the
12 conversation.

13 Q Okay. Do you remember any of the conversation
14 that I haven't asked you about?

15 A I don't remember.

16 Q Okay. Do you remember what you specifically
17 talked about about the banner?

18 A I asked her why the banner had changed. That was
19 the beginning of the conversation.

20 Q Okay. So that was the beginning of the -- back
21 when we were asking about --

22 A Okay.

23 Q -- what you called her to ask her --

24 A Yeah.

25 Q -- that was your question to her was why the

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1 banner had changed; is that right?

2 A Yes.

3 Q Okay. And what did she say about the banner?

4 A It went back to the filing issue that I -- we had
5 talked about before.

6 Q Okay. So she told you the banner had changed
7 because ESN's counsel had logged on to the electronic
8 filing system before midnight, right?

9 A Yes.

10 Q But had not officially filed until after
11 midnight, right?

12 A Yes.

13 Q And that they called up the clerk's office? We
14 talked about that earlier, right?

15 A Yes.

16 Q They called up the clerk's office and they had
17 explained what happened?

18 A Yes.

19 Q And the clerk made a correcting entry; is that
20 right?

21 A I don't know what kind of entry it was.

22 Q Okay. But they corrected something that changed
23 the banner on the complaint?

24 A All I know is the banner changed.

25 Q Okay. Fair enough.

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1 Is there anything else about the
2 conversation with Ms. LaFitte that you can remember?

3 A No.

4 Q No?

5 A Hunh-uh.

6 Q Is there anything you can look at that will
7 refresh your recollection?

8 A I don't know.

9 Q Okay. Have you now told me everything you can
10 remember about your conversation with Ms. LaFitte?

11 A To the best of my recollection.

12 Q Okay. What did you do when you got off the phone
13 with Ms. LaFitte?

14 A I don't remember exactly.

15 Q Did you report back your findings or your
16 conversation with Ms. LaFitte to anyone?

17 A Yes.

18 Q Okay. And who did you report back to?

19 A Kurt Pankratz and Steve Schortgen.

20 Q Okay. And did you do that in an office meeting,
21 E-mailed, telephone?

22 A I can't remember how I told Kurt.

23 Q Okay. So let me -- let me just get -- did you
24 tell them both at the same time?

25 A No.

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1 Q Were they together?

2 A No.

3 Q Okay. Two separate communications?

4 A Yes.

5 Q Okay. Who did you tell first?

6 A Kurt.

7 Q Okay. So -- and you don't remember how you
8 communicated back to him?

9 A Hunh-uh.

10 Q Do you remember when?

11 A It was soon after.

12 Q When you say "soon," minutes, an hour?

13 A The same day.

14 Q The same day.

15 Did you have an understanding that he wanted
16 to have this information quickly?

17 A No.

18 Q And what facts that you learned from Ms. LaFitte
19 did you report back to Mr. Pankratz?

20 MR. CHEAVENS: I instruct her not to answer.
21 That's privileged communication.

22 Q (BY MS. PEDEN) Did Mr. Pankratz have any
23 follow-up questions? I'm not asking what the questions
24 are, just did he have any questions for you about your
25 conversation with Ms. LaFitte?