

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ERIC M. ALBRITTON

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v.

C. A. NO. 6:08-CV-00089

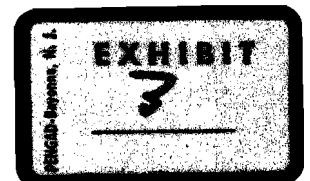
CISCO SYSTEMS, INC.,
RICK FRENKEL, MALLUN YEN &
JOHN NOH

**CISCO SYSTEMS, INC.'S REQUEST FOR TESTIMONY AND RECORDS
OF DISTRICT COURT CLERKS**

TO: David Maland, Chief Clerk of the Eastern District of Texas

Defendants Cisco Systems, Inc. and Richard Frenkel (“Defendants”) hereby request the depositions of Shelly Moore, Mae Velvin, Rhonda Lafitte, David Provines, Peggy Thompson, Rachel Wilson and David Maland (collectively, the “Clerks”) on October 31, 2008 starting at 9:00 a.m. at the offices of the United States District Court for the Eastern District of Texas, 211 W. Ferguson Street, Tyler, Texas 75702, or any location designated by the determining officer (as defined in the Subpoena Regulations Adopted by Judicial Conference). Defendants further request the production of the documents set forth in Exhibit A on or before October 31, 2008.

Defendants originally served subpoenas on the Clerks on or about September 30, 2008. On or about October 2, 2008, David Maland indicated to George McWilliams, counsel for Richard Frenkel, that the Clerks would be available for depositions on October 31, 2008. On or about October 16, 2008, David Maland confirmed that the Clerks would be available and notified George McWilliams’ assistant that he had reserved a room for the depositions. On October 23, 2008, David Maland notified George McWilliams that he had reserved Room 303 for the depositions of the Clerks on October 31, 2008.



Defendants were not aware of the “Subpoena Regulations Adopted by Judicial Conference” (the “Regulations”), which they did not locate despite a good faith effort to research the proper method of serving a clerk, until such regulations were sent to counsel for Defendants on October 27, 2008. Given this and that Defendants were led to believe that the Clerks would appear on October 31, 2008, Defendants request that David Maland allow the Clerks to testify as agreed on October 31, 2008 pursuant to Section 6(c) of the Regulations. Alternatively, Defendants request that David Maland permit the depositions to take place at an agreed-upon date.

Explanation of testimony and documents sought:

Defendants seek the testimony of the Clerks because their testimony is relevant to the issues in the above-referenced lawsuit (the “Lawsuit”). The Lawsuit involves a claim by Eric Albritton that Defendants published an allegedly defamatory article concerning Eric Albritton’s (“Albritton”) filing of a lawsuit (the “ESN Lawsuit”) and subsequent attempts to have the Clerks change the filing date of the Original Complaint in the ESN Lawsuit. (Exhibit B).

Albritton has admitted under oath that the clerks have knowledge of relevant facts pertaining to the Lawsuit. He has also listed David Maland, David Provines, Peggy Thompson and Shelly Moore as persons with knowledge of relevant facts in his disclosures. (Exhibit C). In addition, his former assistant, Amie Mathis, testified that she spoke with Rhonda Lafitte, Peggy Thompson, David Provines, Shelly Moore about the pleadings at issue and what she thought was a glitch in the electronic filing system. In addition, Albritton has produced in the Lawsuit an email from David Maland to The Texas Lawyer concerning the filing of the ESN Lawsuit. (Exhibit D). Defendants seek to depose the Clerks and obtain documents relating to all communications between the Clerks and The Texas Lawyer or any other person regarding the

events at issue in the Lawsuit and the facts underlying the Clerk's changing of the docket to reflect a filing date of October 16, 2007. The facts surrounding the filing and changing of the docket date are essential elements of the Lawsuit, as Albritton alleges that a publication concerning these events contained false statements. (Exhibit B). Defendants anticipate that the depositions will be no longer than 1 hour each.

Reasons why the testimony and records are not readily available from other sources or by other means:

The Clerks who were involved in changing the docket to reflect a filing date of October 16, 2007, are the only ones with knowledge of facts relating to that activity. In addition, Amie Mathis, who spoke to the Clerks regarding the changing of the docket, was not able to recall some of the details of her conversations with the Clerks. Therefore, the Clerks' testimony is essential to establish the facts related to the filing of the ESN Lawsuit and the changing of the docket. And because David Maland communicated with The Texas Lawyer regarding the issue in the Lawsuit, he is the best witness regarding those communications. Finally, the Clerks are the only ones who have access to most, if not all, of the requested documents.

Accordingly, Defendants request that the depositions of the Clerks go forward as agreed on October 31, 2008. Alternatively, Defendants request that the depositions be rescheduled at a mutually agreeable time before November 20, 2008.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: Charles L. Babcock *w/permission by CJP*

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CERTIFICATE OF SERVICE

This is to certify that on this 28 day of October 2008, a true and correct copy of the foregoing was served via electronic mail upon:

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