



David J. Maland
U.S. District Clerk

211 W. Ferguson St.
Tyler, TX 75702

August 11, 2009

Charles L. Babcock, Esq.
Crystal Parker, Esq.
901 Main Street
Suite 6000
Dallas, Texas 75202-3797

Via E-Mail

George L. McWilliams, Esq.
P. O. Box 58
Texarkana, TX 75504

Via E-Mail

Re: Subpoenas in No. 6:08cv89, Albritton v. Cisco, et al.

Dear Mr. Babcock, Ms. Parker and Mr. McWilliams:

This is in response to your letters dated July 9, 2009 and July 28, 2009 which responded to my letters dated June 24, 2009 and July 9, 2009 regarding the trial testimony and documentary production subpoenas received from you. As you know, any request for testimony or documentary production of federal court personnel must comply with the Touhy regulations ("the regulations") adopted by the United States Judicial Conference. A copy of the regulations was attached to my letter dated June 24, 2009.

As the determining officer in this case per Section 7(b)(3) of the regulations, I am authorizing to the following extent only trial testimony and documentary production from the deputy clerks and myself in accordance with Section 8 of the regulations:

(1) *All communications between the clerks and the Texas Lawyer or any other person regarding the events at issue in the lawsuit;*

- (2) *The facts underlying the clerk's changing of the docket to a filing date of October 16, 2007;*
- (3) *Whether or not Amie Mathis uploaded the complaint in No. 5:07cv156, ESN v Cisco on October 15, 2009;*
- (4) *Whether the header or banner stamped on pleadings on the ECF system were placed on the system by the court's ECF software at the time of the filing of the ESN lawsuit;*
- (5) *Whether the docket entry placed on the court's ECF system was generated by the court's ECF system at the time of the filing of the ESN lawsuit;*
- (6) *Whether the ECF system has been altered with respect to its calculation of the filing date that is placed on the court's dockets or pleadings since the time of the filing of the ESN lawsuit;*
- (7) *Whether the ECF system contained a computer glitch that caused it to indicate that the ESN lawsuit was filed on October 15, 2007;*
- (8) *All communication the clerks have had with any of ESN's counsel regarding the filing of the ESN lawsuit, including Eric Albritton and John Ward, Jr. or anyone representing them such as Nick Patton and Patricia Peden;*
- (9) *Whether or not the Notice of Electronic Filing is available on the ECF system to ordinary users who do not receive electronic notice of pleadings through the ECF system;*
- (10) *Questions regarding transaction log and other documents produced by the clerks regarding the filing of the ESN lawsuit;*
- (11) *Whether or not the Eastern District of Texas' website or the ECF website contain a warning that attorneys should not trust the court's official docket or the headers stamped on pleadings on the ECF system;*
- (12) *The programming of the ECF system with respect to filing dates, including what Ms. Paar referred to as a "dictionary" of events in her deposition;*

- (13) *Whether an ordinary user of the ECF system could alter the header or banner stamped on pleadings on the ECF system;*
- (14) *Whether anyone but the clerks could alter the header or banner stamped on pleadings or the court's official docket on the ECF system at the time of filing of the ESN lawsuit;*
- (15) *Whether clerks are permitted to make case dispositive decisions concerning lawsuits;*
- (16) *Whether the date originally stamped on the header or banner stamped on the complaint in the ESN lawsuit stated that it was "filed" on 10/15/2007;*
- (17) *Whether the court's official docket originally stated that the complaint in the ESN lawsuit was "filed" on 10/15/2007;*
- (18) *Whether the Civil Cover Sheet as filed in the ESN lawsuit originally bore a header or banner stamped "filed 10/15/2007" when viewed on the court's ECF system;*
- (19) *Whether or not the Notice of Electronic Filing was electronically delivered to Cisco upon the filing of the complaint in the ESN lawsuit.*
- (20) *Whether there was a public explanation of why the docket in the ESN lawsuit was altered on or about October of 2007, and if one was made, to whom it was made;*
- (21) *Whether the court's transaction record is available to ordinary ECF users;*
- (22) *If the clerks have read the articles at issue in the subject lawsuit since their depositions, and if so, whether the articles accused the clerks of a crime or unethical conduct;*
- (23) *The circumstances surrounding Eric Albritton's appointment to the Local Rules Advisory Committee;*
- (24) *The circumstances surrounding the Local Rules Committee's decision to change the local rules concerning where court should be held when all of the judges in a district recuse and its reasons for proposing the withdrawal of that rule change;*
- (25) *Whether Notices of Electronic Filing since October 15, 2007 continuing to the time of*

trial in this and other cases have different "filed" and "entered" dates;

(26) (Cindy Paar only): The electronic civil case opening information contained in the CM/ECF Administrator's Manual that was provided to Ms. Paar by the authors of the manual (the CM/ECF systems staff of the Administrative Office of the U.S. Courts).

Additionally, I am authorizing production of the following documents in response to the Amended Subpoena for the testimony of Cindy Paar: the text of all Eastern District of Texas dictionary events that are pertinent to the filing of the complaint in the ESN lawsuit,¹ and the electronic civil case opening information contained in the CM/ECF Administrator's Manual that was provided to Ms. Paar by the authors of the manual (the CM/ECF systems staff of the Administrative Office of the U.S. Courts).

Testimony is not authorized on the following topics: matters other than those specifically listed above; testimony that would reveal information privileged as private by federal or state law, common law or regulation; testimony that would reveal classified information; testimony that would reveal information privileged by the attorney work product or the attorney/client privileges or the law enforcement investigation privilege; and testimony on matters of opinion.

I am also reminding you that Deputy Clerk Rhonda Lafitte will be out of the district from Wednesday, September 16, 2009 through Sunday, September 27, 2009. If trial testimony from Ms. Lafitte becomes necessary, it will have to be provided on either September 14th or 15th, the first two days of the scheduled trial. I have checked with the other deputy clerks and they will be available on the anticipated trial dates.

Please be advised that Assistant U.S. Attorneys Tom Gibson and Bob Wells will be present at trial on behalf of the clerk's office in order to monitor the scope of the testimony authorized by me under the Touhy regulations.

Finally, I am reminding you of the purpose of the regulations, which according to Section 1(b) is to:

¹Since there are approximately 1500 dictionary events for our CM/ECF software, there is little sense in the court producing the text of dictionary events that are not pertinent to the electronic filing of complaint at issue in this case. Therefore I am authorizing Ms. Paar to produce only those dictionary events that are relevant to the electronic filing of civil complaints in our court.

(1) conserve the time of federal judicial personnel for conducting official business; (2) minimize the involvement of the federal judiciary in issues unrelated to its mission; (3) maintain the impartiality of the federal judiciary in disputes between private litigants; (4) avoid spending the time and money of the United States for private purposes; and (5) protect confidential and sensitive information and the deliberative processes of the federal judiciary.

As you proceed to the trial of this case, please be mindful that the clerks already have spent numerous hours providing the information counsel has requested and will be required to spend more time away from their public duties to present testimony at the trial of this case. Your help in avoiding additional time being spent by the clerks on this case would be greatly appreciated, including calling these witnesses by videotaped deposition instead of by live testimony.

As the authorizing official I request that if you believe in any way that the deputy clerks will not be in compliance with the subpoenas that you have sent to my attention, please let me know immediately so that we can discuss this issue and take any necessary action with the Court to resolve this prior to the trial.

Thank you for your attention to the above, and please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "David Maland". The signature is written in a cursive, slightly slanted style.

David Maland
U.S. District Clerk, Texas Eastern

cc: Thomas E. Gibson, AUSA
Bob Wells, AUSA
Sig Adams, Assistant AO General Counsel
Nick Patton
Patricia Peden
Jamie Holmes