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Angry Judge Tells Microsoft To Redo 'Temp' Contracts

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By Jay Greene

Seattle Times Technology Reporter

An angry federal judge told Microsoft today to rewrite contracts it is asking temporary workers to sign, calling language Microsoft added to them "outrageously arrogant."

U.S. District Judge John Coughenour peppered Microsoft lawyer Jim Oswald about the contract, which asks temporary workers to choose between forfeiting potential gains from a pending lawsuit or ending their employment at the company. Coughenour asked at what level in Microsoft's corporate hierarchy the contract was approved.

"Before you respond, let me suggest that there might be Fifth Amendment implications," Coughenour said, referring to the right not to self-incriminate.

Oswald explained to the judge that the language applied only to future judgments, not previous rulings. Coughenour was incredulous.

"I thought maybe I might hear that this was done by somebody without the advice of counsel and upon reflection of counsel it was realized that it might be charitably described as ill-advised," Coughenour said. "I confess that, of all the thoughts I had, never did it occur to me that you would feel that it was a defense to this conduct that it was prospective only."

Then, Coughenour told Microsoft's lawyers to rethink the contract language.

"We're going to recess this question for about a week to give the lawyers an opportunity to suggest to their client that they do the right thing, and then we'll discuss it again in the event that they court doesn't feel the right thing has been done," Coughenour said. "All right."

He told the lawyers to come back to his courtroom next Thursday, then adjourned the hearing and walked out of the courtroom. The judge called for the hearing, which lasted 10 minutes, after The Seattle Times reported the new contract language last week.

Microsoft spokesman Dan Leach didn't discuss the judge's anger after the hearing. But he said the company will address Coughenour's concerns.

"Obviously, we'll listen to what he had to say, and we'll come here next week," Leach said. "We're going to go back and look at the issues that the judge brought up."

Coughenour presides over two class-action suits filed by temporary workers - one in 1992 and another last year. The suits, both pending, claim Microsoft treats those workers like full-time employees in every regard but compensation. The workers are seeking payment from employee stock-purchase plans to which they claim to be entitled.

Microsoft currently has about 5,000 temporary workers. They often sign three- or six-month contracts. Microsoft added language to the new contracts that requires workers to give up any money from a judgment, "even if a court or government agency" determines they are entitled to it.

A group representing those workers were thrilled that Coughenour decided to take on Microsoft.

"This looks like he's very upset about the direct attack on the rights of Microsoft temporary workers," said Marcus Courtney, an organizer with the Washington Alliance of Technology Workers.

David Stobaugh, a lawyer representing those workers, expects Microsoft to contact him to draw up new language.

"I assume they will talk to us," Stobaugh said.

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