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## **Federal Court Disqualifies In-House Counsel**

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The federal district court in Seattle recently issued a rare decision disqualifying in-house counsel from participating in a case involving the lawyer's corporate employer. *Docklight Brands, Inc. v. Tilray, Inc. and High Park Holdings, Ltd.*, 2023 WL 5279309 (W.D. Wash. Aug. 16, 2023), is a dispute over a licensing agreement. The litigants were formerly related affiliates within the same overall corporate group before a restructuring split the plaintiff from the defendants. Although separated, they later entered into the licensing agreement that became the focal point of the litigation.

In-house counsel for the plaintiff helped draft the agreement on behalf of all three entities. When a dispute over the agreement arose later, the in-house counsel still held a senior internal legal position with the plaintiff and was assisting the plaintiff's outside counsel in the litigation. The defendants moved to disqualify the in-house counsel from the case. The court agreed and disqualified the in-house counsel from further participation.

In doing so, the court found that the in-house counsel had a former client conflict under RPC 1.9—which (absent a waiver) prohibits a lawyer from handling a matter adverse to a former client that is substantially related to work the lawyer did for the former client. The court found the in-house counsel fell within this

prohibition: “[In-house counsel] admits he was involved in structuring Defendants and describes a joint representation between . . . [them] . . . as to the . . . Licensing Agreements, which he prepared.” 2023 WL 5279309 at \*5.

Because the in-house counsel had not entered a formal appearance in court, the order disqualifying the in-house counsel functionally prohibited him from further participation in the litigation. Although co-counsel can also be subject to disqualification in some circumstances under *First Small Business Investment Company of California v. Intercapital Corporation of Oregon*, 108 Wn.2d 324, 738 P.2d 263 (1987), the court did not disqualify the plaintiff’s outside counsel. Rather, it modified a protective order to bar the in-house lawyer from reviewing discovery received from the defendants and directed him to destroy all confidential discovery he had received to date.

Although the court’s analysis of the former client conflict rule in *Docklight* was not unusual, disqualifying in-house counsel is rare.

## **ABOUT THE AUTHOR**

Mark J. Fucile of Fucile & Reising LLP advises lawyers, law firms and legal departments throughout the Northwest on professional responsibility and risk management. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark has served on the Oregon State Bar Legal Ethics Committee and is a member of the Idaho State Bar Section on Professionalism & Ethics. Mark writes the Ethics Focus column for the Multnomah (Portland) Bar’s

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