

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

B251619

In the Matter of)
)

INTEL CORPORATION,)
)

a corporation.)
)

DOCKET NO 9288

ORDER DENYING MOTION TO DISQUALIFY
RICHARD G. PARKER, ESQ.

Respondent Intel Corporation ("Intel") moves to disqualify complaint counsel Richard G.

According to the DAEO, Mr. Parker is "authorized to participate as a Commission official in the Intel matter." DAEO Auth. at 1. The DAEO concluded: "A concern that your participation in the Intel matter would cause a reasonable person to question the integrity of the agency's actions seems spurious." DAEO Auth. at 4.²

On December 11, 1998, the DAEO requested advice from the Office of Government Ethics ("OGE") regarding Mr. Parker's continued participation in this matter. Letter from Christian White to Honorable Stephen D. Potts, Ex. D at 4. On January 13, 1999, OGE advised that it found "no reason to question [the DAEO's] authorization of Mr. Parker's participation in the Intel matter." Letter from Stephen D. Potts, Director OGE to Christian White, DAEO at 1.

("OGE letter," Ex. D).

The comments to the ABA Model Rules state that a disqualification motion "should be viewed with caution . . . for it can be misused as a technique for harassment." Model Rules of Professional Conduct Rule 1.7 cmt. 15. "Motions to disqualify opposing counsel are subject to ~~strict judicial scrutiny~~ because of the cost and inconvenience to the party seeking disqualification."

permit."³ Here, Mr. Parker obtained express authorization as provided in the applicable federal law -- the Standards of Conduct -- and is therefore in full compliance with Rule 1.11(c).⁴

Moreover, Rule 1.11(c) is not controlling here. Although the Commission has on occasion looked to the ABA rules for guidance, the Commission has also consulted the District of Columbia Rules of Professional Conduct. Commission Rule 4.1(e)(1) provides that "all attorneys practicing before the Commission shall conform to the standards of ethical conduct required by the bars *of which the attorneys are members*" (emphasis added).

Mr. Parker is a member of the D.C. Bar, which has not adopted ABA Model Rule 1.11(c). Under D.C.'s Rules, Mr. Parker's participation is permitted.⁵

The District of Columbia's version of Model Rule 1.11 is important because it differs significantly from its ABA counterpart and because it probably governs more lawyers than any other non-federal rule. . . . *The rule does not provide prohibitions, as ABA Model Rule 1.11 does, on lawyers moving from private to*

[i]n the District of Columbia, where there are so many lawyers for the federal and D.C. governments and their agencies, a number of whom are constantly leaving

805-06 Using its "supervisory authority" over contempt proceedings, the Supreme Court held that the "beneficiary of a court order may not be appointed as prosecutor in a [criminal] contempt action alleging a violation of that order." *Id.* at 809. The rationale behind this ruling is inapplicable where the attorney-client relationship has been terminated:

In a case where a prosecutor represents an interested party, however, the ethics of the legal profession *require* that an interest other than the Government's be taken

whether the prosecutor will be subject to extraneous influence.⁶

Id. at 807. Here, Mr. Parker's only duty of loyalty is to the Commission. Intel argues that Mr. Parker zealously nursed the case against Intel. Changes in trial tactics, choice of experts