

Edaruchei Clan of Ngerdelolk v. Edaruchei Clan of Ngerkeyukl, 4 ROP Intrm. 63 (1993)

**EDARUCHEI CLAN OF NGERDELOLK,
Appellant,**

v.

**EDARUCHEI CLAN OF NGERKEYUKL,
Appellee.**

CIVIL APPEAL NO. 39-91
Civil Action No. 543-90

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: December 10, 1993

Counsel for Appellant: Mariano W. Carlos

Counsel for Appellee: Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice.

MILLER, Justice:

Edaruchei Clan of Ngerdelolk appeals the trial court's denial of its motion to disqualify attorney Johnson Toribiong from representing Edaruchei Clan of Ngerkeyukl in their dispute over the ownership of Ngercheu Island. Edaruchei Clan of Ngerdelolk argued below that Toribiong could not represent Edaruchei Clan of Ngerkeyukl because such representation would conflict with his representation of the Chiefs of Ngerdelolk in their claims regarding the former village of Ngchemiangel. The trial court found no conflict and therefore denied the motion to disqualify. We reverse.

BACKGROUND

Johnson Toribiong represents Edaruchei Clan of Ngerkeyukl in its dispute with Edaruchei Clan of Ngerdelolk over the ownership **164** of Ngercheu Island. He also represents the Chiefs of Ngerdelolk Village in their effort to identify and claim properties formerly owned by Ngchemiangel Village. Edaruchei Clan of Ngerdelolk claims that Ngercheu Island is one of these properties.

When the present dispute was before the Land Claims Hearing Office, the hearing officer granted Edaruchei Clan of Ngerdelolk's motion to disqualify Toribiong. After the case was referred to the trial court, a similar motion was made. The trial court found no conflict of

Edaruchei Clan of Ngerdelolk v. Edaruchei Clan of Ngerkeyukl, 4 ROP Intrm. 63 (1993) interest. In denying the motion to disqualify, the trial court stated that Toribiong’s representation of Ngerdelolk Village was “with regard to who the members of Ngerdelolk are, and had nothing to do with the issue here, i.e. which of two identically named clans from different villages owns Ngercheu Island.” Edaruchei Clan of Ngerdelolk appeals this ruling.

DISCUSSION

We begin by noting that the general rule in United States courts is that an order denying a motion to disqualify counsel is not immediately appealable, but must await final judgment for review. *See, e.g., Firestone Tire & Rubber Co. v. Risjord*, 101 S.Ct. 669, 671 (1981). As appellee has not raised the appealability issue, we will proceed to the merits of the appeal. Henceforth, however, we adopt the U.S. rule and hold that an order denying a motion to disqualify counsel is not subject to interlocutory appeal. In the rare instance when a party can prove irreparable harm from proceeding to trial without review of the **165** denial of a disqualification motion, that party may seek relief through a writ of mandamus. *See* 9 J. Moore, *Moore's Federal Practice* ¶ 110.13[10] (2d ed. 1983) (writ of mandamus available for review of denials of motions to disqualify in “truly exceptional case[s]”).

The starting point for analyzing Edaruchei Clan of Ngerdelolk’s conflict of interest claim is Rule 1.7(a)(1) of the ABA Model Rules of Professional Conduct, which prohibits a lawyer from representing a client if that client’s interests are directly adverse to another client. Edaruchei Clan of Ngerkeyukl’s interests are directly adverse to Ngerdelolk Village’s interests if Ngerdelolk Village claims Ngercheu Island in the Ngchemiangel Village litigation. Edaruchei Clan of Ngerdelolk’s representative, Santos Olikong, who is also a member of the Chiefs of Ngerdelolk Village, testified that Ngerdelolk Village claimed title to Ngercheu Island in the litigation involving the former properties of Ngchemiangel Village. Thus, Toribiong’s representation of Edaruchei Clan of Ngerkeyukl, which also claims Ngercheu Island, is directly adverse to his representation of Ngerdelolk Village. ¹ This being the case, Toribiong cannot represent Edaruchei Clan of Ngerkeyukl in the present litigation.

166 At both the hearing and in his written opposition to the motion to disqualify in the trial court, Toribiong argued that Ngerdelolk Village could not now claim ownership of Ngercheu Island because a 1958 Trust Territory case determined that ancestors of the current members of Edaruchei Clan of Ngerkeyukl owned it. ² Toribiong’s reliance on the Trust Territory case does not negate the claimed conflict of interest, but rather demonstrates its existence. Insofar as his representation of Edaruchei Clan of Ngerkeyukl requires him to argue that Ngerdelolk Village

¹ The trial court’s finding that Toribiong’s representation of Ngerdelolk Village “was with regard to who the members of Ngerdelolk are” was clearly erroneous. At a hearing on the motion to disqualify, Toribiong explained that he was retained by Ngerdelolk Village to “represent them in their claim for the entirety of the former village of Ngchemiangel.”

² Mr. Toribiong did not appear at oral argument, apparently because he had not filed a brief on appellee’s behalf. Although Mr. Toribiong was correct in his understanding that he would not be permitted to present oral argument without leave of the Court, that fact alone did not obviate the need for his attendance. Even if a party has not submitted a brief, its counsel of record must still appear to answer any questions the Court may have.

Edaruchei Clan of Ngerdelolk v. Edaruchei Clan of Ngerkeyukl, 4 ROP Intrm. 63 (1993) cannot claim Ngercheu Island, he is thereby advancing a theory that--right or wrong--is directly adverse to the position that the record reveals Ngerdelolk Village has taken on the issue.³ Accordingly, Rule 1.7(a)(1) requires his disqualification.

The trial court's ruling is REVERSED; it is hereby directed to grant the motion to disqualify. This case is REMANDED for further proceedings.

³ Moreover, it was represented at oral argument that Edaruchei Clan of Ngerdelolk was one of four clans comprising Ngerdelolk Village, and that its claim for Ngercheu Island was ultimately for the benefit of the whole Village.