

In re Armaluuk, 9 ROP 9 (2001)
**In the Matter of
FRANCISCO ARMALUUK,
Respondent.**

DISCIPLINARY PROCEEDING
NO. 01-03

Supreme Court, Disciplinary Tribunal
Republic of Palau

Heard: August 2, 2001
Decided: August 3, 2001

[1] **Professional Responsibility:** Due Diligence

Attorney's failure to file a timely notice of appeal without excuse or justification other than an unfamiliarity with the rules of appellate procedure held to be in violation of ABA Model Rules 1.1 and 1.3.

[2] **Professional Responsibility:** Sanctions

Attorney may be barred from appellate practice until he passed an examination on appellate procedure as a result of a pattern of negligence which showed an inability or unwillingness to acquaint himself with the rules of appellate procedure.

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; DANIEL N. CADRA, Associate Justice Pro Tem; J. UDUCH SENIOR, Associate Justice Pro Tem.

This is the second time Respondent has been charged with a violation of the rules of professional responsibility for misconduct in appellate practice which resulted in the dismissal of his clients' appeals. Respondent represented the appellant in Civil Appeal No. 00-05 but did not file an opening brief. Respondent's only excuse was that he thought the court would notify him of the deadline for filing the brief. This excuse was deemed inadequate, as the rules of appellate procedure quite clearly set forth the time period requirements for the filing of opening briefs, ROP R. Civ. Pro. 31(a), and Respondent was found to be in violation of ABA Model Rules 1.1 and 1.3 relating to competence and diligence in representation.

While that disciplinary proceeding was pending, Respondent undertook the representation of Taima Ngirarngei in an appeal of the judgment in Case No. LC/F 9-159 in the Land Court. Respondent did not file a notice of appeal until 41 days after his client was served with the judgment, in violation of ROP R. App. Pro. 4(a), which requires the filing of a notice of appeal within 30 days of service of the judgment. The appeal was dismissed and Respondent was again charged with incompetent representation.

[1, 2] Respondent is understood to admit that he failed to file a timely notice of appeal in his

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representation of Taima Ngirarngei and that his failure is without excuse or justification other than his unfamiliarity with the rules of appellate procedure. Thus we again find Respondent to be in violation of ABA Model Rules 1.1 and 1.3. The question of the appropriate sanction remains. Disciplinary Counsel recommends a public reprimand, probation, and a fine. We think a more severe sanction is in order. Respondent's pattern of negligence shows that he is either unable or unwilling to acquaint himself with the rules of appellate procedure such that he can competently represent clients on appeal.¹ Respondent should be barred **110** from appellate practice until he demonstrates a grasp of the rules of appellate procedure that he now clearly lacks. Accordingly, Respondent is suspended from the practice of law in the Appellate Division of the Supreme Court until he passes an examination on appellate procedure which will be prepared and administered when Respondent informs the court that he is ready to take the exam. No further sanction is imposed.

¹Respondent's pattern of negligence has continued in this disciplinary proceeding. Respondent has made no attempt to respond to the charges against him. Respondent did not file an answer as required by Disciplinary Rule 5(c) and made no attempt to inform the court that he would be off-island on the day of the hearing. Although Respondent has apparently been off-island for some time, the court did not learn of Respondent's absence until the day before the hearing when Disciplinary Counsel informed the court that he had received a fax from Respondent. We are at a loss to understand why Respondent informed Disciplinary Counsel of his absence rather than the court. Respondent's failure to take cognizance of his obligations under the Disciplinary Rules reinforces our conclusion that Respondent should be barred from appellate practice until he demonstrates a knowledge of the rules of procedure by passing an examination.