

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

EMORY MESUBED,
Appellant,
v.
PALAU ELECTION COMMISSION,
Appellee.

Cite as: 2017 Palau 3
Civil Appeal No. 16-019
Appeal from Civil Action No. 16-081

Decided: January 12, 2017

Counsel for AppellantJ. Toribiong
Counsel for AppelleeA. Trout

BEFORE: JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice
DANIEL R. FOLEY, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice,
presiding.

ORDER GRANTING MOTION TO DISMISS AND DISMISSING APPEAL

PER CURIAM:

[¶ 1] On November 8, 2016, counsel for Appellant filed a notice of appeal in this matter. Forty-five days later, on December 23, 2016, Appellant’s counsel filed his opening brief. Appellee Palau Election Commission (“PEC”) moved to dismiss the appeal. The PEC contends that this is an election-related appeal that falls under the expedited briefing deadlines provided in ROP R. App. P. 31(d). Under Rule 31(d), opening briefs are due within fifteen days of the filing of the notice of appeal. Because Appellant’s opening brief was not filed within the fifteen-day limit, the PEC argues that the appeal should be dismissed. We agree.

[¶ 2] Rule 31(c) provides that “[i]f an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal.” The rules provide two different time limits

depending on the subject matter of the appeal. Rule 31(b) provides a standard time limit of forty-five days to file an opening brief. Rule 31(d) provides a shortened time limit of fifteen days for “[a]ny appeal in which the election of a public official or the qualifications or office of a elected official is disputed.” We conclude that Rule 31(d) applies to this appeal and that the opening brief is a month late.

[¶ 3] Appellant does not contest that his suit proceeded on an expedited basis in the Trial Division. The introductory paragraphs of his complaint sought an expedited disposition under ROP R. Civ. P. 9(i)¹ because “this action pertains to the dispute regarding the results of the election of the members of the incoming Ngiwal State Legislature.” Both the parties, and the trial court, proceeded below as if the expedited deadlines applied. We see no reason to proceed differently on appeal.

[¶ 4] Appellant’s arguments that the expedited deadlines do not apply are unpersuasive. Appellant suggests that whether an appeal is to be expedited depends on whether an appellant requests expedited treatment in the notice of appeal. He further asserts that if the PEC “had wished for a fast tracked appeal it should have moved this Court to expedite it” upon service of the notice of appeal. Neither contention is correct. A party cannot toggle on or off the rules as he or she desires. The subject matter of the appeal determines which rule—and in turn which time limit—applies.

[¶ 5] Appellant also contends that this appeal no longer involves an election dispute. He argues that despite the expedited treatment and injunctive relief sought at trial, “the heart of this case has always been a question [of] statutory interpretation” necessary to “ensuring the fairness, freedom, and integrity of *all* elections.” Appellant’s suggestion that he only seeks straightforward review of the interpretation of a statute is not consistent with his appellate brief, which seeks an “order” enjoining the PEC from alleged “unlawful practice[s].” Regardless, appellate briefing is too late to alter the nature of a lawsuit or add or modify claims.

¹ Civil Rule 9(i) is the trial-level analogue of Appellate Rule 31(d). The relevant language of the two rules is functionally identical, providing expedited deadlines for certain election-related cases.

[¶ 6] Finally, Appellant’s generalized invocation of democratic principles as a reason not to dismiss his appeal misapprehends the role of the Judiciary in our democracy. Courts are not general forums for airing grievances and judges are not appointed to referee every dispute that arises in society. Courts hear only certain disputes in law and equity, and judges decide those disputes by applying identifiable legal and equitable standards. If Appellant believes the election statutes at issue here need revising, the elected branches of government are the proper venues in which to initiate that debate.

[¶ 7] Rule 31(d) was added to the Appellate Rules in 2007 to expedite cases involving an election of a public official. This matter qualifies as such a case. The comments to the rule explain that “[i]t is in the interests of justice to expeditiously resolve election and qualification disputes.” *See* Rule 31(d), cmt. Had Appellant initially sought additional time to file his brief, he would have been required to show “extraordinary circumstances” for the extension. *See* Rule 31(d) (“No enlargement of time will be granted absent a showing of extraordinary circumstances.”). He has not shown any such circumstances here. “Appellant’s counsel simply pleads for another chance for the case to be decided on its merits. This is sorely insufficient to satisfy the extraordinary circumstances standard.” *Fritz v. KSPLA*, 17 ROP 294, 297 (2010).

[¶ 8] For the foregoing reasons, the PEC’s motion to dismiss is granted and this appeal is dismissed for Appellant’s failure to comply with Rule 31.

SO ORDERED, this 12th day of January, 2017.