

Ngirmang v. Oderiong, 14 ROP 181 (2007)
GABRIELA NGIRMANG,
Appellant,

v.

BARES ODERIONG, SINGEO
TECHONG, and ABEDNEKO RDIALUL,
Appellees.

CIVIL APPEAL NOS. 05-023 and 05-030
Case Nos. LC/N 02-188 – LC/N 02-193

Supreme Court, Appellate Division
Republic of Palau

Decided: May 24, 2007

Counsel for Appellant: Oldiais Ngiraikelau

Counsel for Appellees: Ernestine Rengiil, Salvador Remoket

SALII, Justice:

Appellees Singeo Techong and Abedneko Rdialul have filed a motion for leave to file a late response brief and concurrently move for an extension of time, until May 28, 2007, to file their response brief. Appellees' response brief was originally due on May 10, 2007, but in response to a joint appellee motion for an extension of time, an order extended the time for filing their response brief until May 18, 2007. Appellee Bares Oderiong filed his response brief on May 18, 2007. Appellees Techong and Rdialul failed to file a motion or response brief by May 18, but on May 22, they filed their motion for leave to file a late brief. As grounds for the delay, counsel for Appellees Techong and Rdialul states that he was deliberating on a pending matter in the Ngerulmud Judiciary Building and that he "lost track of his Office schedule and failed to ask for more time or to combine his argument **¶182** with Appellee Oderiong's response."

In deciding whether a timely motion should be granted, several factors are considered, such as the danger of prejudice, the length of delay and its potential impact on judicial proceedings, the reason for the delay and whether it was within the reasonable control of the movant, and whether the movant acted in good faith. Where, as here, a litigant allows the period for their response to expire before requesting an extension of time, the party's burden is considerably higher: it has to show that the "failure to act was the result of excusable neglect." ROP R. Civ. P. 7(b)(2). To prove excusable neglect, a party must make a clear showing that the circumstances causing the delay were unique or extraordinary. *See* 5 Am. Jur. 2d *Appellate Review* § 315 (1995). Counsel must establish something "more than the normal (or even reasonably foreseeable but abnormal) vicissitudes inherent in the practice of law." *Tellei v. Ngirasechedui*, 5 ROP Intrm. 148, 150 (1995) (quoting *ROP v. Singeo*, 1 ROP Intrm. 428A,

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428D (1987)). Failure to keep an accurate and timely calendar does not constitute excusable neglect. *In re Kloulubak*, 1 ROP Intrm. 364, 365 (1986).

The instant motion for leave to file an untimely response brief and for an extension of time is DENIED. Pursuant to Rule 31(c) of the ROP R. App. P., if an appellee fails to file a brief, his or her counsel must appear at oral argument but may not be heard except by permission of the Appellate Division.