

Pamintuan, et al., v. ROP, 14 ROP 189 (2007)
LOLITA PAMINTUAN, et al.,
Appellants,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 07-001
Criminal Case No. 06-183 & 06-212

Supreme Court, Appellate Division
Republic of Palau

Decided: August 17, 2007

[counsel names not listed]

PER CURIAM:

By order of the Trial Division dated June 8, 2007, Appellant Katherine Manio was granted an extension until June 14, 2007, in which to file her notice of appeal. Appellant failed to timely file her notice of appeal and instead filed on June 15, 2007. On July 12, 2007, the Appellate Division issued a show cause order requiring Appellant to show cause why her appeal should not be dismissed in light of her failure to timely file a notice of appeal. Although a response to the show cause order was due on August 1, 2007, appellant's counsel failed to file a response by that date and instead filed the response on August 2, 2007. In Appellant's counsel's motion for leave to file a late response, counsel claimed that "it was still before 4:30 p.m." when he attempted to file the response. Although the Court granted counsel's motion to file a late response, the order admonished his dilatory behavior.

Appellant's response to the show cause order contends that counsel failed to timely file the notice of appeal because he did not collect the filing fee¹ from Appellant Manio until June 15th as Appellant did not have any money in jail on the 14th and, by the time counsel realized this, "it was too late to then return to counsel's office to prepare a motion to extend the time by one day." The situation described in counsel's response is not extraordinary, but merely a reasonably foreseeable occurrence that he should have been prepared to handle. Counsel is responsible for leaving adequate time to collect the funds for filing or alternatively filing a motion to extend the time available **L190** for filing.

¹It astounds the Court that Appellant's court-appointed counsel failed to file a motion to proceed *in forma pauperis*. As stated in Appellant Manio's Motion to Proceed with Audio Recording, "Appellant Manio was a non-resident contract worker whose contract expired in December 2006. She has not worked since in or around August, 2006, and has no source of income." Accordingly, Appellant Manio's filing fee could, and probably should, have been waived, had her counsel filed the proper motion.

Pamintuan, et al., v. ROP, 14 ROP 189 (2007)

When called to answer for the untimely filing of this notice of appeal, counsel contended that Rules 4(a) and 4(c) of the Rules of Appellate Procedure contemplate a sixty day period for filing a notice of appeal, leaving July 9th as the final day to file a notice of appeal. While these rules allow for the availability of up to 60 days, it remains the responsibility of counsel to request these extensions, which are granted upon a showing of good cause. Counsel requested an extension until June 14, 2007, which was granted, but he did not ask for any further extension. Counsel frivolously claims that the amendments to the Rules of Appellate Procedure in December 1994 alter the holding of *Sebaklim v. Uehara*, 1 ROP Intrm. 649, but case law after December 1994 still upholds the principle that “[t]he late filing of a notice of appeal is a fatal jurisdictional defect.” *Tellei v. Ngirasechedui*, 5 ROP Intrm. 148, 149 (1995).

“It is the responsibility of appellate counsel to prosecute their appeals” *Sato v. Ngerchelong State Assembly*, 5 ROP Intrm. 192 (1996) quoting *Kamiishi v. Han Pa Constr. Co.*, 5 ROP Intrm. 135, 136 (1995). “In order to constitute good cause or excusable neglect, counsel must establish something more than the normal (or even reasonably foreseeable but abnormal) vicissitudes inherent in the practice of law.” *Id.* quoting *Tellei v. Ngirasechedui*, 5 ROP Intrm. 148, 150 (1995).

Appellant’s counsel did not properly monitor and prosecute this appeal. He has failed to show good cause or excusable neglect. The Court hereby sanctions Appellant’s counsel in this matter, Mark Doran, and orders him to pay \$500.00 to the Clerk of this Court by the close of business on August 25, 2007. *Cf. Sato v. Ngerchelong State Assembly*, 5 ROP Intrm. 192 (1996); *ROP v. Singeo*, 1 ROP Intrm. 428A, 428D (1987)(\$500 sanction imposed for similar transgressions). As Mr. Doran is currently serving as court-appointed counsel to Appellant Manio, he is further ordered not to apply for reimbursement of this amount or for any time he spent responding to the order to show cause.

Appellant Manio’s request to file a late notice of appeal as filed on June 15th is GRANTED.