

**ORAKIBLAI CLAN, BLIUB CLAN,
SOWEI CLAN, NGERBUUCH CLAN,
OCHEDARUCHEI CLAN, NGEUDEL
CLAN, OKEDERAOL CLAN, BOSAOL
CLAN, SECHEDUI CLAN,
NGERUOSECH CLAN, IBELKUNGEL
CLAN and UES PEDRO through her
representative UCHERBELAU ABEL K.
SUZUKI,
Appellants,**

v.

**GOVERNMENT OF THE UNITED
STATES OF AMERICA and
GOVERNMENT OF JAPAN,
Appellees.**

CIVIL APPEAL 11-003
Civil Action No. 09-251

Supreme Court, Appellate Division
Republic of Palau

Decided: January 17, 2012

[1] Courts: Judges

The Chief Justice is the administrative head of the judicial system. Inherent in this authority is the ability to create the three-judge panels to hear appeals.

[2] Courts: Judges

The assignment of judges to an appellant panel is not a proceeding but a ministerial task. It is administrative, not judicial, and does not rise to the level of a proceeding.

[3] Appeal and Error: Filing Deadlines

There is no due process violation by denying a motion for extension of time. Under Palau's appellate rules of procedure, the court in its discretion may order the period for filing deadlines enlarged. Each request is carefully reviewed on its own merits for cause before it is granted, or denied.

Counsel for Appellants: Brian Sers Nicholas,
Yukiwo Dengokl

Counsel for Appellees: William Ripdath,
Mariano Carlos

BEFORE: ALEXANDRA F. FOSTER,
Associate Justice; KATHERINE A.
MARAMAN, Part-Time Associate Justice;
and HONORA E. REMENGESAU
RUDIMCH, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable
ARTHUR NGIRAKLSONG, Chief Justice,
presiding.

PER CURIAM:

Appellants argue that, in issuing its opinion in this case with the panel as constituted and without oral argument, the Judiciary violated Appellants' rights under Palau's Constitution, the Code of Judicial Conduct, and the Rules of Appellate Procedure.

Appellants seek a hearing to request three types of relief. First, they ask that the present appellate panel members¹ recuse

¹ The motion is unclear as to whether Appellants seek to replace only Justice Foster or whether more than one panel member should be replaced. *See* ("This Court can still empanel a neutral and

themselves from serving on the panel. Second, they request that the Appellate Division's January 17, 2012 opinion be vacated. Third, they request a new appellate panel to hear oral arguments. Appellees have filed no response. Upon careful examination of the brief submitted in support of this motion, Appellants' motion is denied.

MOTION TO RECUSE THE PRESENT APPELLATE PANEL

Appellants argue that the present appellate panel should recuse itself. The original panel consisted of Associate Justices Salii, Materne, and Foster. In April 2011, Appellants filed a motion to disqualify Justice Salii, which was granted. That same month, Justice Materne was removed from the panel by order of the Chief Justice.

Appellants argue that because the Chief Justice acted as the trial judge, he should have disqualified himself from "any proceeding" relating to this case, including the decision to remove Associate Justice Materne from the appellate panel. Appellants believe the Chief Justice's actions created an appearance of impartiality, bias, and prejudice, in violation of Canon 2 (impartiality). Appellants also raise an equal protection argument arising from Justice Foster's April 28, 2011, order denying their request for additional time to file Reply Briefs. Finally, Appellants argue that their due process rights

impartial Appellate Panel with the remaining 'untainted' Associate Justice to hear this case anew."); *see also* ("[A] new Appellate Panel that is perceived by the general public to be fair and impartial is warranted and mandated to hear oral arguments and consider this matter anew.").

were violated when the Court denied their requests for oral argument.

I. Composition of Panel

[1] The Chief Justice is the administrative head of the judicial system. Palau Const., art. X, § 12. Inherent in this authority is the ability to create the three-judge panels to hear appeals. *Id.* at § 2. The Chief Justice may appoint judges to serve on appellate panels based on a number of considerations consistent with the Code of Judicial Conduct.

[2] Appellants are correct that, pursuant to Canon 2 of the Code of Judicial Conduct, a judge shall disqualify himself or herself in “any proceeding” in which it may appear to the reasonable observer that the judge cannot decide the matter impartially, including where “the judge’s ruling in a lower court is the subject matter of review.” But they are incorrect in arguing that Canon 2 prohibited the trial judge here, the Chief Justice, from assigning justices to an appellate panel. The assignment of judges to an appellant panel is not a proceeding but a ministerial task. It is administrative, not judicial, and does not rise to the level of a proceeding. Accordingly, the Chief Justice acted within his authority in removing a panel member and appointing a new one.

II. Enlargement of Time

Appellants also raise a due process argument regarding enlargement of time. Appellees requested and received additional time to file responsive briefs. Appellants also requested additional time to file their replies, citing as justifications a felony jury trial scheduled to begin after the deadline for filing

the replies and the speed of mail service from Palau. Appellants claim that they were “entitled to have their request for enlargement of time to file their Reply Briefs herein considered in the same manner in all respects and no different than that of Associate Justice Foster’s considerations of similar requests made by the United States and Japan.”

A single justice may entertain a motion under ROP R. App. P. 27(c). Justice Foster, acting as the single justice to entertain the motion, found “no good cause” to grant the requested enlargement of time. Specifically, Justice Foster concluded that any delay in receiving mail was unlikely in the Internet age, particularly since Appellants’ counsel had local counsel and appeared to have a way to receive briefs electronically. She also found that no conflict existed between Appellants’ counsel’s trial and the tentative deadline for filing the reply briefs since the deadline preceded trial. Moreover, the motion was premature because Appellees might have sought additional extensions in the interim.

[3] Justice Foster did not exceed her authority in denying the motion to enlarge time. In essence, Appellants argue that they have a right to an enlargement of time if their opponents received one. This is not the standard. Under ROP R. App. P. 26(c), the court “in its discretion may . . . for good cause shown order the period enlarged if the first request is made before the expiration of the period originally prescribed.” Each request for enlargement of time is carefully reviewed on its own merits for cause before it is granted, or denied.

Appellants sought reconsideration of this decision, but the court denied the motion

because it did not point out with specificity the matters that were overlooked or misapprehended by the court.

III. Request for Oral Argument

Appellants also believe they should have been granted an opportunity to present oral arguments to the Court. ROP R. App. P. 34(a) governs requests for oral argument as well as the time and place for oral argument. Oral argument is not automatic. Appellants cite *Ngerketiit Lineage v. Seid*, 8 ROP Intrm. 44, 47 (1999), to argue that due process requires an opportunity to be heard. However, filing written briefs affords the parties the opportunity to be heard. *Id.* “[P]rocedural due process does not entitle a litigant to a hearing on every motion.” *Id.* *Ngerketiit Lineage* provides no assistance to Appellants and in fact supports the Court’s right to deny the requested oral argument.

Accordingly, Appellants’ motion seeking recusal of the Appellate Panel is **DENIED**.

MOTION TO VACATE THE JANUARY 17, 2012, ORDER

Appellants argue that because the appellate panel was neither fair nor impartial, the Opinion that the panel issued must be reversed and vacated. Neither the Constitution, nor the Rules of Appellate Procedure have been violated by members of the Judiciary. Accordingly, the motion to vacate the January 17, 2012, Opinion is **DENIED**.

MOTION FOR A NEW APPELLATE PANEL TO HEAR ORAL ARGUMENTS

Appellants argue that because the panel was neither fair nor impartial, the Court can still “empanel a neutral and impartial Appellate Panel with the remaining ‘untainted’ Associate Justice to hear this case anew.” Again, because Appellants have failed to show the panel acted inappropriately, we deny this motion.² Accordingly, Appellants’ Motion for a Hearing is **DENIED**.

² This is not the forum for addressing potential violations of the Code of Judicial Conduct. If Appellants believe that one or more of the justices on this panel have violated the Code of Judicial Conduct, Appellants should follow the procedures set out in Canon 7 of the Code.